AGENDA

Te Kaunihera o Te Tairāwhiti
GISBORNE
DISTRICT COUNCIL

P O Box 747, Gisborne, Ph 06 867 2049 Fax 06 867 8076
Email service@gdc.govt.nz Web www.gdc.govt.nz

MEMBERSHIP: Her Worship the Mayor Rehette Stoltz, Deputy Mayor Josh Wharehinga, Colin Alder, Andy Cranston, Larry Foster, Debbie Gregory, Ani Pahuru-Huriwai, Rawinia Parata, Aubrey Ria, Tony Robinson, Rob Telfer, Teddy Thompson, Rhonda Tibble and Nick Tupara

COUNCIL/TE KAUNIHERA

DATE: Thursday 26 January 2023
TIME: 9:00AM
AT: Te Ruma Kaunihera (Council Chambers), Awarua, Fitzherbert Street, Gisborne

AGENDA – OPEN SECTION

Council

Chairperson:	Mayor Stoltz
Deputy Chairperson:	Cr Wharehinga
Membership:	Mayor and all Councillors
Quorum:	Half of the members when the number is even and a majority when the number is uneven
Meeting Frequency:	Six weekly (or as required)

Terms of Reference:

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

1. The power to make a rate.
2. The power to make a bylaw.
3. The power to borrow money, or purchase or dispose of assets, other than in accordance with the Long Term Plan.
4. The power to adopt a Long Term Plan, Annual Plan, or Annual Report.
5. The power to appoint a Chief Executive.
6. The power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the Long Term Plan or developed for the purpose of the Local Governance Statement.
7. The power to adopt a remuneration and employment policy.
8. Committee Terms of Reference and Delegations for the 2019–2022 Triennium.
9. The power to approve or change a proposed policy statement or plan under clause 17 of Schedule 1 of the Resource Management Act 1991 (RMA).
10. The power to approve or amend the Council's Standing Orders.
11. The power to approve or amend the Code of Conduct for elected members.
12. The power to appoint and discharge members of Committees.
13. The power to establish a joint committee with another local authority or other public body.

14. The power to make the final decision on a recommendation from the Ombudsman where it is proposed that Council not accept the recommendation.
15. Make those decisions which are required by legislation to be made by resolution of the local authority that are not listed in 1-14 above.
16. Consider any matters referred to it from any of the Committees.
17. Authorise all expenditure not delegated to staff or other Committees.

Note: for 1-7 see clause 32(1) Schedule 7 Local Government Act 2002 and for 8-13 see clauses 15, 27, 30 Schedule 7 of Local Government Act 2002 and section 34A of Resource Management Act 1991

3.1. Confirmation of non-confidential Minutes 15 December 2022

MINUTES

Draft & Unconfirmed

GISBORNE DISTRICT COUNCIL

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MINUTES of the GISBORNE DISTRICT COUNCIL/TE KAUNIHERA

Held in Te Ruma Kaunihera (Council Chambers), Awarua, Fitzherbert Street, Gisborne on Thursday 15 December 2022 at 9:00AM.

PRESENT:

Her Worship the Mayor Rehette Stoltz, Deputy Mayor Josh Wharehinga, Colin Alder, Andy Cranston, Larry Foster, Debbie Gregory, Ani Pahuru-Huriwai, Rawinia Parata, Aubrey Ria, Tony Robinson, Rob Telfer, Daniel Thompson, Rhonda Tibble and Nick Tupara.

IN ATTENDANCE:

Chief Executive Nedine Thatcher Swann, Director Lifelines David Wilson, Director Internal Partnerships James Baty, Director Liveable Communities Michele Frey, Chief Financial Officer Pauline Foreman, Chief of Strategy & Science Jo Noble, Te Kai Arataki Gene Takurua, Senior Policy Advisor Chris Gilmore, Democracy & Support Services Manager Heather Kohn and Committee Secretary Penny Lilburn

The meeting commenced with a karakia.

Secretarial Note: Cr Ria attended via zoom.

Secretarial Note: Cr Parata arrived 9.10am.

1. Apologies

MOVED by Cr Stoltz, seconded by Cr Robinson

That the apology for lateness from Cr Tibble be sustained.

CARRIED

2. Declarations of Interest

Cr Foster declared an interest in report 22- 205 regarding the dog bylaws as he is a Kaiti beach resident.

Cr Ria declared an interest in both bylaws around the Kaiti beach area and report 22-79 as she is a member of Ngati Oneone.

3. Confirmation of non-confidential Minutes

3.1 Confirmation of non-confidential Minutes 17 November 2022

In week 3/4 of the New Year staff will be the meeting with the Rongowhakaata Iwi Trust.

MOVED by Cr Foster, seconded by Cr Wharehinga

That the Minutes of 17 November 2022 be accepted. **CARRIED**

3.2 Action Sheet

Noted.

3.3 Governance Work Plan

Noted.

4. Leave of Absence

There were no leaves of absence.

5. Acknowledgements and Tributes

There were no acknowledgements or tributes.

6. Public Input and Petitions

6.1 Renee Roroa and Dr Terry Loomis - Te Weu

Discussions included:

- Deep South funding will carry Te Weu till February and then they will look at other avenues to keep the mahi going.
- The research on deliberative democracy reinforces that a more comprehensive and holistic approach to adaption is crucial for ratepayers and neighbourhoods.
- Te Weu have looked at the existing research and will take it to communities to gain their views and outlooks on the ideas.
- Council have signed a contract with Te Weu to deliver the deliberative democracy component to Council.
- Part of the better off funding from central government has been put aside to engage effectively with the community around climate change.

7. Extraordinary Business

MOVED by Mayor Stoltz, seconded by Cr Wharehinga

That LATE Report 22-286 Woody Debris Clean Up 2022/23 Season be accepted as an agenda item.

8. Notices of Motion

There were no notices of motion.

9. Adjourned Business

There was no adjourned business.

10. Reports of the Chief Executive and Staff for DECISION

10.1 22-244 Kiwa Pools Fees and Charges Deliberations Report

Council with Xanthe Consulting developed the fees and charges proposal which was presented to the 11 August 2022 Finance & Performance Committee meeting and the balance model was recommended to take forward to consultation. A round of consultation occurred with 119 submissions and a hearing followed recently.

Discussions Included:

- Heading into winter, the costs will remain as consistent as possible. The expectation in winter is that the patronage will remain as steady as summer.
- A steeped rate will come in as the prices remain consistent which Comet will be able to use. This will fall under recommendation f.
- The demographics of Gisborne will be brought back at a later date and staff will look at these statistics to see if the fees and charges need to be reviewed.
- There is a concern of the vulnerability for rural users, particularly schools and tamariki. To help combat this Water Safe New Zealand has provided further funding for vulnerable communities which is something Council can explore for the Tairāwhiti region to make the pools more accessible for rural communities.
- The Ministry of Education subsidises some of the travel costs for school students to use the pools.
- Through the Community Facilities Strategy there is an early Work and Income project which is around improving the rural school pool facilities. It is a partnership across multiple agencies towards promoting Learn to Swim.
- The draft fees and charges will be reviewed in February but will be adopted as a final in May.
- The balanced approach is an evidence-based approach on similar demographics and the charges are still below the benchmark prices.
- There will be a six-month review following the opening of the pool to look at the fees and charges.
- The salary wages will increase to provide for the greater amount of surface area at the new Kiwa Pool.

- Recommendation i is added to review the fees and charges when practicable.
- Introduce a pass: 1 adult, 4 children for $15 to add to recommendation c.

MOVED by Cr Robinson, seconded by Cr Alder

That the report be left to lie on the table.

DIVISION:

For	Against	Abstained
Cr Alder	Cr Parata	Cr Wharehinga
Cr Robinson	Cr Gregory	Cr Ria
Cr Tupara	Cr Telfer	
Cr Thompson	Cr Foster	
Cr Pahuru-Huriwai	Cr Cranston	
	Mayor Stoltz	

LOST

MOVED by Mayor Stoltz, seconded by Cr Cranston

That the Council/Te Kaunihera:

1. Adopts the fees and charges for the Kiwa Pools complex as presented on 11 August (Report 22-97), with changes to the following:
   a. Reinstating the option of an annual pass for frequent users of the pool complex and introducing the option to pay this monthly in advance. Setting the annual pass fee at $460.00 and the monthly in advance annual pass fee at $45.00/month.
   b. Setting the spectator fee to $1.50 but restricting its application to spectators for regional or national events, and for all non-swimmers using the outdoor pool complex in summer.
   c. Introducing two new Family Passes – two adults and two children for $15.00 and one adult and four children for $15.00.
   d. Community Services Card holders and children - 10 pass cost of $35.
   e. Approve Kiwa Pool's to initiate 4 grant/scholarship awards based on affordability of the users, for competitive sports for under 18 year olds.
   f. Retaining the proposed lane hire fees as presented. Approve that discounts can be applied for by sports codes and schools with long term annual lane rental following the principles of the Rates Remissions Policy;
      i. Year 1 – Long term hire (annual lane hire) 30%.
      ii. Year 2 – Long term hire (annual lane hire) 15%.
   g. Introduce a new annual pass for under 18-year-olds at $300.00.
   h. Offer a discount for participating families with three or more children (under the age of 18 years old) who are regular users belonging to the club. Here the discount off the entry fee should be:
      i. Third child - 20% discount off entry fee price.
      ii. Four or more children 50% off entry price.
   i. Review the fees and charges when practicable.

DIVISION:

For	Against	Abstained
Cr Alder	Cr Wharehinga	Cr Ria
Cr Telfer	Cr Robinson	
Cr Tupara		
Cr Thompson		
Cr Pahuru-Huriwai		
Mayor Stoltz		
Cr Gregory		
Cr Foster		
Cr Cranston		
Cr Parata		

CARRIED

10.2 22-246 Keeping of Animals, Poultry and Bees Bylaw 2012 Review - Adoption of Statement of Proposal for Consultation

Discussions included:

- The reduction of the number of chickens per household is due to the likeliness of increased noise complaints as well as vermin and flies in urban areas. A written approval does need to be supplied if there are more than six chickens so Council can provide recommendations to the owner to minimise the mess that is made.
- The number of complaints with poultry is a small number of complaints.
- The policy needs more user-friendly language, particularly around the boundaries of what makes a household rural or residential.
- The proposal for bees is two hives each household.
- Staff will seek feedback from the community regarding how many bees can be in one hive.

MOVED by Cr Robinson, seconded by Cr Telfer

That the Council/Te Kaunihera:

1. Determines that the proposed draft Keeping of Animals Bylaw 2023
   a. is in the most appropriate form of the bylaw; and
   b. does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
2. Adopts the Draft Statement of Proposal including the Draft Keeping of Animals Bylaw 2023 for consultation using the special consultative procedure.

CARRIED

Secretarial note: Mayor Stoltz thanked Meredith Akuhata-Brown on behalf of the Council for her dedicated support to the Tairāwhiti community and the Gisborne District Council.

Secretarial Note: Council adjourned for morning tea at 11:15am and reconvened at 1:43am.

10.3 22-205 Draft Dog Control Policy and Bylaw: Statement of Proposal for Consultation

Discussions included:

- The dog access areas are limited to the urban areas. The rules in the bylaw do apply to the entire region, however in the rural areas it is a difficult area to enforce.
- The differences between rural and urban areas are under the Dog Control Act.
- The Waikane/Midway area has been tightened with enforcement due to a lot of traffic and is particularly busy with the surf-life saving club.

Secretarial Note: Cr Tibble joined the meeting at 12:54pm.

MOVED by Cr Ria, seconded by Cr Parata

That the Council/Te Kaunihera:

1. Determines that a bylaw is the most appropriate means of addressing the perceived problems arising from private dog ownership and access to public places.
2. Determines that the proposed draft Dog Control Bylaw 2023
   a. is in the most appropriate form of the bylaw; and
   b. does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
3. Adopts the Draft Statement of Proposal including the Draft Dog Control Policy 2023 and Draft Dog Control Bylaw 2023 for consultation using the special consultative procedure.

CARRIED

10.4 22-281 Annual Report Dog Control Policy and Practices

- Kaiti Beach has had a number of dog issues including destruction of wildlife and injury to people.
- A person cannot be placed on probation or disqualified on a one-off incident.
- The criteria for probation is under the Dog Law Act 1994.
- If a dog has been found unregistered, they are moved to the pound until the fee has been paid.

MOVED by Cr Wharehinga, seconded by Cr Parata

That the Council/Te Kaunihera:

1. Adopts the Annual Report on Dog Control Policy and Practices 2021/22.
2. Instructs the Chief Executive to give necessary notifications following adoption of the report.

CARRIED

10.5 22-79 Barton Street

MOVED by Cr Foster, seconded by Cr Gregory

That the Council/Te Kaunihera:

1. Agrees to set apart 1,019m^2 of Local Purpose Reserve (road), being part of Lot 202 DP 4803 (Record of Title GS3D/904), known as Barton Street, for educational purposes.
2. Authorises the Chief Executive to sign a Memorandum of Understanding with the Ministry of Education to confirm Council's support.

CARRIED

10.6 22-277 Remuneration Authority Determination - Positions of Additional Responsibility and Elected Member Allowances

MOVED by Cr Cranston, seconded by Cr Gregory

That the Council/Te Kaunihera:

1. Adopts Option 2 for the remuneration of the elected members base salary and positions of additional responsibility.
2. Instructs the Chief Executive to complete Gisborne District Council's remuneration proposal and submit to the Remuneration Authority for approval.
3. Approves the Elected Member Allowances and Recovery of Expenses Policy 2022–2025.

CARRIED

10.7 22-283 Updated Board Appointments and Remuneration Policy 2022

Discussions included:

- Council appointed an independent chair with specific skills as best practice.
- The Chief Executive is the only person who has the recruitment power to employ as part of the selection process.
- A recruitment specialist will sit alongside the appointment panel in making the longlist, shortlist, and recommendation to Council.

MOVED by Cr Wharehinga, seconded by Cr Tibble

That the Council/Te Kaunihera:

1. Adopts the revised Board Appointments and Remuneration Policy subject to any changes requested by Council.

CARRIED

10.8 22-267 Council & Committee Meeting Schedule 2023

MOVED by Cr Stoltz, seconded by Cr Pahuru-Huriwai

That the Council/Te Kaunihera:

1. Adopts the attached meeting schedule until the end of 2023.

CARRIED

10.9 22-286 Woody Debris Clean-Up 2022/23 Season

Discussions included:

- 2021's cleanup cost was 360k.
- In 2022, the $250k spent on beach clean-up was split with $127k to Uawa and $123k on town beaches.
- The transportation would happen by the 23rd of December, but there is no access to a chipper at such short notice.
- Are working with Rongowhakaata to place the mulch at one of their nursery sights.
- This is unbudgeted work.
- It would cost $70k to move the debris currently placed between Grey Street and the Beacon and transport the debris to further along the beach where it is stored in option c.
- The source needs to be addressed in the Long Term Plan to try and solve the core of the issue.
- Option D was added which was to undertake a controlled clean-up of the beach and move the debris at a cost of $70,000.
- Option B was carried.

MOVED by Cr Stoltz, seconded by Cr Gregory

That the Council/Te Kaunihera:

a. Notes that the beach clean-up this season to date has cost $250,000.
b. Option B: Undertake a controlled clean-up of the beach of $52,000.

DIVISION

For	Against
Mayor Stoltz	Cr Parata
Cr Alder	Cr Pahuru-Wai
Cr Telfer	Cr Thompson
Cr Wharehinga	
Cr Tupara	
Cr Tibble	
Cr Cranston	
Cr Foster	
Cr Gregory	
Cr Robinson	
Cr Ria	

CARRIED

11. Reports of the Chief Executive and Staff for INFORMATION

11.1 22-262 Climate Change Update

- The risk analysis assessment will be finished by June/July 2024.
- Council will start work in 2023 with Te Weu on deliberative democracy which requires input from 10 different groups for engagement.
- The regional decarbonisation road map will be presented to Council by May 2023. The draft will be ready by early 2023.

MOVED by Cr Ria, seconded by Cr Pahuru-Huriwai

That the Council/Te Kaunihera:

1. Notes the contents of this report.

CARRIED

12. Public Excluded Business

Secretarial Note: These Minutes include a public excluded section. They have been separated for receipt in Section 12 Public Excluded Business of Council.

13. READMITTANCE OF THE PUBLIC

MOVED by Cr Gregory, seconded by Cr Telfer

That the Council re-admits the public.

CARRIED

14. Close of Meeting

There being no further business, the meeting concluded at 2:41pm.

Rehette Stoltz
MAYOR

3.2. Action Sheet

Meeting Date	Item No.	Item	Status	Action Required	Assignee/s	Action Taken	Due Date
17/11/22	12.1	Chief Executive Activity Report November 2022	In progress	Provide Councillors with a brief update on the community township upgrades including what is being spent and where.	Lillian Ward		31/01/23
17/11/22	14.1	Additional Action Items	Completed	**22-231 Chief Executive's Activity Report** Provide Councillors with a collective update on the 'Early Wins' under the heading 'Focus Projects' ie how they are tracking, what is about to commence etc.	Denise Williamson, Michele Frey	**11/01/2023 Denise Williamson** Content will be added in the next Chief Executive report.	08/12/22
17/11/22	14.2	Additional Action Items	Completed	**22-231 Chief Executive's Activity Report** **Focus Projects** Provide feedback to Councillors regarding the support for the Waka Ama group in Gisborne along with some easy help ideas such as removal of debris from under the bridges, trimming of overhanging trees on the riverbanks and noting that when wastewater is flushed into the river it becomes a health and safety issue for their paddlers.	Abbe Banks	**21/12/2022 Abbe Banks** Followed up with the Journeys team - they have removed the trees under the bridges, and protocols are in place for when wastewater is discharged. I was in touch with a waka ama club based at ANZAC Park and had the boat loading ramp cleared of silt. The Recreation and Amenity Advisor has been informed of the silt and debris issues (particularly after weather events) the advisor has set up regular assessments of the boat ramp by our recreational contractor. The contractor will resolve these as unscheduled works where silt or minor debris on the boat ramps is a problem.	18/01/23
17/11/22	14.3	Additional Action Items	In progress	**22-231 Chief Executive's Activity Report** **Biodiversity** Provide Councillors with the number of Farm Environmental Plans (FEPs) that have not yet been received as to date only 82 have been received by Council and they were required by 31 May 2021.	Tom Porter		16/01/23

Meeting Date	Item No.	Item	Status	Action Required	Assignee/s	Action Taken	Due Date
17/11/22	14.4	Additional Action Items	In progress	**22-231 Chief Executive's Activity Report** In future Activity Reports provide details on the outcome of the workstreams along with the impact of the work that is being carried out.	Jade Lister-Baty		03/02/23
15/12/22	10.2	Keeping of Animals, Poultry and Bees Bylaw 2012 Review - Adoption of Statement of Proposal for Consultation	Awaiting internal response	Provide Council with the number of poultry complaints in 2022.	Abi Wiseman		01/02/23

Te Kaunihera o Te Tairāwhiti
GISBORNE
DISTRICT COUNCIL

23-4

Title: **23-4 Gisborne District Council Feedback on Proposed Changes to Class 4 Gambling Licensing System**

Section: Strategy

Prepared by: Abi Wiseman - Senior Policy Advisor

Meeting Date: Thursday 26 January 2023

Legal: No	Financial: No	Significance: **Low**

Report to COUNCIL/TE KAUNIHERA for decision

PURPOSE - TE TAKE

The purpose of this report is to seek Council's endorsement of draft feedback on proposed changes to the Class 4 licencing system under the Gambling Act 2003.

SUMMARY - HE WHAKARĀPOPOTOTANGA

Te Tari Taiwhenua Department of Internal Affairs (DIA) is seeking early feedback on proposed changes to the Class 4 Licensing system under the Gambling Act 2003. Class 4 gambling includes high-risk, high-turnover gambling – gaming machines in pubs and clubs.

The proposed changes, set out in **Attachment 1,** aim to move towards a more performance-based licensing system by providing an opportunity for operators to demonstrate good practice and have this recognised by the regulator. The proposals include issuing class 4 licenses of up to three years in duration (licenses must currently be renewed annually).

This report seeks Council's endorsement of the draft feedback to DIA included in **Attachment 2**. The feedback notes Council's support for proposals to improve compliance with the Act, but highlights that a broader review of the system is required to effectively reduce gambling-related harm in the region. Council is not best placed to provide feedback on the specific implementation questions raised by DIA as Council has no role in the ongoing licensing process.

The feedback is due to DIA by 31 January 2023. The decision to provide the attached feedback to DIA is of **Low** significance in accordance with Council's Significance and Engagement Policy.

RECOMMENDATIONS - NGĀ TŪTOHUNGA

That the Council/Te Kaunihera:

1. **Approves the attached draft feedback to the Department of Internal Affairs on proposed changes to the Class 4 licensing system under the Gambling Act 2003.**

Authorised by:

Joanna Noble - Chief of Strategy & Science

Keywords: Gambling, Class 4 Licences, Gambling Act 2003, Te Tari Taiwhenua Department of Internal Affairs, DIA

BACKGROUND - HE WHAKAMĀRAMA

DIA's Proposed Changes

1. As the gambling regulator, Te Tari Taiwhenua Department of Internal Affairs (DIA) is seeking feedback on early proposals to update the Class 4 licensing system under the Gambling Act 2003 (the Act). The Act classifies Class 4 gambling as high-risk, high-turnover gambling, such as gaming machines in pubs and clubs (i.e., outside a casino). This type of gambling may only be conducted by a corporate society, and only to raise money for an authorised (e.g., community and non-commercial) purpose.

2. The proposals are set out in **Attachment 1** and are described as a work in progress to give councils a sense of how DIA's thinking is progressing. The aim of DIA's proposals is to move towards a more performance-based licensing system, by providing operators an opportunity to demonstrate good practice, and to have that recognised by the regulator. The proposals include issuing licenses of up to three years in duration (licenses must currently be renewed annually). Initial feedback on the proposals is due to DIA by 31January 2023.

Council's Role and Position

3. Council has limited powers under the Act, and no role in the ongoing licensing process for Class 4 operators. DIA has the sole authority for issuing venue licences, renewing these licences when they expire, and ensuring venues are complying with the Act.

4. The Act requires that Council has a Gambling Venue Policy (Policy). Council reviewed its Policy in 2022, and a revised Policy was published in June 2022. The Policy focuses on preventing the growth of gambling in Tairāwhiti and minimising related harm, in line with community feedback. However, local government does not have the appropriate tools under the Act to effectively achieve this purpose.

5. As part of the Policy review process, Council agreed to:

    - retain the Sinking Lid Policy for Class 4 venues and TABs
    - further restrict the relocation of gambling venues (by only allowing venues to relocate for earthquake strengthening)
    - introduce an Ethics Policy to state Council's position on using proceeds from gaming and other forms of gambling to directly fund Council activities, and
    - pursue non-policy options to lobby Central Government.

6. During the Policy review process, the New Zealand Community Trust (NZCT) deferred a decision on a funding application from Council as result of Council's draft Policy, noting its focus on reducing the number of venues through a stricter relocation policy and retaining the sinking lid approach. The application was considered by NZCT in August and declined for the following reason: '*NZCT generally prefers to allocate Gisborne funding for organisations in your community that value the availability, and continued availability, of Class 4 funding.*' The development of an ethics policy as part of the 2024-2034 Long Term Plan will state Council's position on applying for these funds.

7. In April 2022, Council provided a submission in response to DIA consultation on reducing gambling harm. This submission highlighted Council's frustration with the lack of regulatory tools available to Councils to address community concerns about gambling as well as the absence of dedicated in-region gambling support services in Tairāwhiti.

8. While Council has no role in the licensing process and is not best placed to provide feedback on the implementation questions raised by DIA, this consultation does provide an opportunity to highlight the gaps in the current system and propose areas for improvement.

DISCUSSION and OPTIONS - WHAKAWHITINGA KŌRERO me ngā KŌWHIRINGA

9. Draft feedback on the proposed changes is included in **Attachment 2**. The feedback notes that while Council supports proposals to improve overall compliance with the Act, important factors are being overlooked, including:
    a. the appropriate funding of in-person gambling support services
    b. the appropriateness of the community funding model
    c. lack of visibility on DIA's licensing and compliance process
    d. lack of local government authority and tools to effectively reduce gambling-related harm.
10. Further detail on each of these points is set out in the attached draft feedback, as well as an overview of gambling and gambling-related harm in the region.
11. If Council does not provide feedback to DIA, this would be a missed opportunity to advocate for the changes required to minimise gambling-related harm in Tairāwhiti.

ASSESSMENT of SIGNIFICANCE - AROTAKENGA o NGĀ HIRANGA

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: **Low** Significance
This Report: **Low** Significance

Inconsistency with Council's current strategy and policy
Overall Process: **Low** Significance
This Report: **Low** Significance

The effects on all or a large part of the Gisborne district
Overall Process: **Low** Significance
This Report: **Low** Significance

The effects on individuals or specific communities
Overall Process: **Low** Significance
This Report: **Low** Significance

The level or history of public interest in the matter or issue
Overall Process: **Low** Significance
This Report: **Low** Significance

12. The decision to provide the attached feedback to DIA is considered to be of **Low** significance in accordance with Council's Significance and Engagement Policy.

COMMUNITY and TANGATA WHENUA/MĀORI ENGAGEMENT - TŪTAKITANGA HAPORI / TANGATA WHENUA

13. No community nor tangata whenua engagement was undertaken in the drafting of the attached feedback. Public consultation will be undertaken by DIA on any proposed changes to the legislation at a later date.

CLIMATE CHANGE – Impacts / Implications - NGĀ REREKĒTANGA ĀHUARANGI – ngā whakaaweawe / ngā ritenga

14. No climate change impacts or implications have been identified.

CONSIDERATIONS - HEI WHAKAARO

Financial/Budget

15. There are no cost implications associated with the decision to provide the attached feedback to DIA.

16. The feedback recommends that DIA reconsider the community funding model set out in the Act. Changes to this model, should they be pursued, could have financial implications for Council. Council has benefited both directly and indirectly from the current funding model, and Gambling Machine Proceeds (GMP) has been a major source of community funding in Tairāwhiti.

17. The rationale for recommending DIA reconsider this funding model is that it currently redistributes funds often from those least able to afford it, to groups who should have other funding access options.

Legal

18. There are no legal implications associated with the decision to provide the attached feedback to DIA.

POLICY and PLANNING IMPLICATIONS - KAUPAPA HERE me ngā RITENGA WHAKAMAHERE

19. The attached feedback is consistent with Council's Gambling Venue Policy 2022, and with Council's decision to continue to take non-policy action to lobby Central Government on this issue. The feedback is aligned with previous feedback provided to DIA regarding the Gambling Act 2003.

RISKS - NGĀ TŪRARU

20. There are no risks associated with the decision sought in this report.

NEXT STEPS - NGĀ MAHI E WHAI AKE

Date	Action/Milestone	Comments
30 January 2023	Staff submit feedback to DIA	

ATTACHMENTS - NGĀ TĀPIRITANGA

1. Attachment 1 - DIA Proposed Changes to Class 4 Licensing System [**23-4.1** - 10 pages]
2. Attachment 2 - Council Feedback to DIA on Changes to Class 4 Licensing System [**23-4.2** - 3 pages]

Regulating Gambling for Aotearoa New Zealand

Performance-based class 4 licensing

Information about proposals under development and opportunity to feedback

Te Tari Taiwhenua Internal Affairs

Introduction

1. The Gambling Act 2003 is nearly 20 years old and we are looking at various aspects of the class 4 licensing system to make sure it remains fit for purpose.
2. Our aim is to move towards a more performance-based licensing system. We want to give operators a greater chance to show where they are implementing good practice, and to have that recognised by the regulator.
3. As part of this, we are revisiting the potential to issue licences of up to three years in duration.
4. This paper sets out the areas where we think the licensing framework could be refreshed to better highlight, encourage and reward good practice.
5. This is work in progress, so could be subject to change. But we are keen to share our current thinking and would be interested to hear feedback from organisations across the class 4 sector about our proposals.

Class 4 licensing under the Gambling Act

6. The Department of Internal Affairs generally issues one-year licences where applicants can demonstrate that they meet the minimum legal criteria established by the Gambling Act. Those criteria are set out in section 52 of the Act (republished in the appendix to this paper), which lays out the grounds on which the Secretary must be satisfied prior to issuing a licence.
7. The Act does, however, provide for licences of up to three years to be awarded, with the intention that this power be used to recognise high performing operators. We believe that the proposals detailed below have the potential to support the kinds of good practice that everybody in the class 4 sector wants to see.

Proposals for refreshed licensing framework

8. We are proposing a performance-based approach anchored in the need to prevent and minimise gambling harm, ensure operational integrity and financial viability of operators, and maximising returns to authorised purposes.
9. Where we can be satisfied that an applicant is performing above the minimum standards, issuing a three-year licence may be appropriate. Where we consider performance is sitting around the minimums, it may be more appropriate to issue a shorter licence, assuming the applicant still meets the minimum legal criteria. This would provide an opportunity for the licence-holder to make improvements, with the prospect of obtaining a longer licence at a future renewal.
10. While we would not rule out issuing longer licences to new applicants, our expectation is that these will more likely be considered when applications for licence renewal are considered. This will better enable us to make assessments that are informed by an applicant's track record.
11. Our proposals for updates to the licensing framework fall into two groups. Organising things this way should help us manage the implementation of the changes, building towards the fully refreshed framework rather than changing everything all at once. More details about the potential implementation timetable are set out later in this document.

12. The first group of updates contains straightforward enhancements to elements of the current licensing process, which we believe could be incorporated into the existing annual system.
13. The second group includes elements that would introduce more targeted assessment of certain criteria, and provisions to support good practice beyond the statutory minimums, which would warrant the award of longer licences.

Group 1 – Enhancements to parts of the current annual licensing framework

Due diligence regarding key persons in each gambling operation

14. Sections 54 and 71 of the Act set out requirements for operator and venue licence holders to notify the Department about significant changes in relation to their licence. This includes certain circumstances affecting key persons (e.g. bankruptcy), and changes to the individuals holding key person positions. A key person is someone who holds a specific role (defined in section 4 of the Act) that exercises significant influence in the management of a class 4 gambling operation. Class 4 operators are required to notify the Department before or as soon as reasonably practicable after any changes to the key persons in their gambling operation.
15. Preferably, these notifications should be made before the changes occur. We understand that it is not always possible but we do expect societies to notify us with little delay. However, we are finding that this is often not the case, with notifications reaching us many weeks, or even months, after a key person change has occurred.
16. We are therefore proposing to require that societies provide details and assurances in their licence applications about the due diligence they carry out regarding key persons in their gambling operation. This may include details of the processes that an operator has in place to ensure that individuals are suitable to hold a key person position. It may also include information about the arrangements an operator has to make sure it is informed about personnel changes at venues, so that it can update the Department as necessary. We will also review the records we hold regarding the completeness and timeliness of notifications during the preceding licence period.

Greater transparency regarding individuals' interests, and management of conflicts of interest

17. Section 110 of the Act includes requirements that corporate societies must publish details of "any interest that any member of a corporate society's net proceeds committee has in any applicant who is a recipient of a grant." Additionally, the Department requires that when key persons are appointed within a class 4 gambling operation, we are notified of any conflict that may exist regarding that individual's responsibilities as a key person. This is important in order to help minimise the likelihood of breaches under sections 113 and 118 of the Act, which set out a range of activities that class 4 licence holders and key persons are prohibited from doing. It also has a role in supporting the purpose of the Act to "limit opportunities for crime or dishonesty associated with gambling and the conduct of gambling."

18. However, we have not published extensive guidance about what may constitute a conflict of interest. As a result, we receive very few notifications in this regard, even though it is likely that there are a range of interests and conflicts that should be declared and managed appropriately.
19. We are proposing to set out clearer expectations regarding the declaration of interests, and what constitutes a conflict of interest in the class 4 sector. It is likely that we will draw on aspects of the framework that already covers the charities sector in New Zealand. Details of that can be found on the Department's Charities Services webpages: www.charities.govt.nz/im-a-registered-charity/running-your-charity/conflict-of-interestpanga-rongorua/
20. The charities guidance sets out that a conflict of interest exists when a personal interest or loyalties could affect that person's ability to make a decision in the best interest of the charity. A conflict of interest may be actual, potential or perceived and may be financial or non-financial. Conflicts of interest may also cover benefits to related parties as well as direct benefit to key persons within an organisation. This could include a key person's spouse or de-facto partner, immediate family members, and business partners.
21. Not every conflict of interest will necessarily be a concern, a reason not to appoint a particular individual into a key person role, or a reason to avoid transacting with a related party. The important thing will be to disclose them so that everything is out in the open and, where necessary, to have a plan in place for managing significant conflicts.
22. We will be looking for class 4 societies to have procedures in place for identifying and recording interests, and managing conflicts. We will also expect details to be provided when we receive notification about key persons amendments.

Assurance and evidence of how harm minimisation policies are being implemented in practice

23. Every holder of a class 4 venue licence is required to develop a policy for identifying gambling harm, and to ensure that venue managers and other relevant staff put it into use. The Department must approve those policies prior to their adoption, and they must comply with any regulations made under section 316 of the Act.
24. We are proposing that applications to renew operators' licences should contain details and assurances about the systems that are in place to make sure that these harm minimisation policies are well understood by venue managers and staff, and that they are effectively implemented.
25. This may include information about the engagement that corporate societies carry out, such as how frequently they visit venues and the type of harm minimisation training they provide. It could also include details of how they make sure new staff get trained and there are enough trained staff at the venue.
26. Our assessment of licence applications will consider any relevant records from venue inspections, which could include observations made about harm minimisation practice and compliance with relevant regulatory requirements.

Group 2 – Targeted assessment of aspects of operator finances, and provisions to support good practice beyond the statutory minimums

Targeted assessments of operating costs in comparison to the returns made to authorised purposes

27. Corporate societies and clubs provide the Department with audited accounts each year, which we review to ensure financial compliance. Our focus in that regard has primarily been to check that each operator is meeting its requirement to return a minimum percentage of its net proceeds to its authorised purpose(s) (40% return for distributing societies; 37.12% return for clubs, or other percentage specified in licence conditions).
28. However, we plan to begin conducting more targeted assessments of licence holders' operating costs - i.e. controllable costs minus elements such as fees, duties, levies, and depreciation. We will consider these costs in relation to the returns made to authorised purposes. These assessments will enable us to conduct more effective scrutiny of the extent to which class 4 licence holders are minimising their operating costs, focusing on ensuring that expenditure is actual, reasonable and necessary, in order to maximise the net proceeds.
29. Of course, not every class 4 gambling operation is the same, and operating costs will be affected by a wide range of factors. For example, a corporate society with a large number of venues, including some in rural locations, may incur greater costs supporting those venues than a society with a smaller number of venues concentrated in a single urban area.
30. Some societies may be able to achieve operational efficiencies through their size and structure, whereas others may feel it is appropriate to contract out certain functions. And there will be some costs that remain largely fixed regardless of the size of the class 4 operation.
31. At present, we believe these proposed assessments can be conducted using information that is already provided in societies' annual financial returns. However, we may ask applicants for more details if necessary.

Grant processes and due diligence

32. A corporate society that mainly or wholly distributes net proceeds to the community must, at least annually, review the policy and processes that it has in place for assessing applications and awarding grants. We are proposing to make this requirement a more active part of the assessment when considering the potential to award longer licences.
33. For example, applicants may be required to comment on and explain their grant policy and processes, and the due diligence they undertake to ensure fairness, transparency and lawfulness. This could include information about how societies follow up with grant recipients to check that money is spent appropriately. It could also require justification of very large grants and repeated grants given to the same or related recipients.

Organisational governance

34. Good governance is one of the main elements that differentiates a high performing organisation from an average one. Leadership and direction from the top sets the tone and standards that are applied across the organisation as a whole. If an organisation gets this part of its operation right, it is likely that it will not only be meeting the minimum legal criteria for holding a class 4 licence but exceeding them.
35. For this reason, we believe it is important that any consideration for the award of a longer class 4 licence feature an assessment of the governance arrangements that are in place at each applicant.
36. It will be important for applicants to understand what the Department will look for. We will prepare guidance about this and plan to engage with the class 4 sector as part of that work. However, it may be useful for readers of this document to familiarise themselves with some of the resources that are available to support good governance in New Zealand's not-for-profit and associated sectors. These include:
    - The Institute of Directors' Not-for-profit governance hub www.iod.org.nz/nfp
    - The Centre for Social Impact's National Action Plan for Community Governance www.centreforsocialimpact.org.nz/knowledge-base/building-community-governance-capability-and-capacity
    - Sport New Zealand's Nine Steps to Effective Governance https://sportnz.org.nz/sector-guidance/nine-steps-to-effective-governance/

37. Sport New Zealand's guide contains the following description:

    Governance is the process by which the board...

    - *ensures the organisation complies with all legal and constitutional requirements*
    - *sets strategic direction and priorities*
    - *sets high-level policies and management performance expectations*
    - *characterises and oversees the management of risk*
    - *monitors and evaluates organisational performance in order to exercise its accountability to the organisation and its owners.*

    There is no universally agreed definition of governance. The definition above identifies the key elements of governance, reinforcing the principle that the board's job is an active one. It also implies a separation of roles between the board and management, and highlights aspects of the relationship between these two roles.
    [Sport New Zealand, Nine Steps to Effective Governance, p.10]

38. We believe this is a helpful starting point for any governance component within the class 4 licensing system. Assessment of governance might include:
    - review of each organisation's governing document and the operational procedures for the board;

- the processes for identifying and appointing board members;
- the qualifications and experience of board members;
- the extent to which there is diversity and community interest represented on the board; and
- how the board addresses matters of compliance, risk and audit, including possible review by the Regulator of board papers and minutes.

39. Evidence that a corporate society or club's governance arrangements are robust and performing well will contribute towards satisfying the Secretary that there are no factors that are likely to detract from achieving the purpose of the Gambling Act (s.52(1)(i)). This will support any assessment of the likelihood that the organisation will continue to perform well, and above the statutory minimums, over a longer licence period of up to three years.

A note on clubs

40. The Gambling Act applies to clubs that operate electronic gaming machines in largely the same way that it applies to corporate societies and their associated venues. That means that any refresh to class 4 licensing in order to establish a more performance-based system will also apply in much the same way across the various operators in the sector.
41. However, the Department knows that the circumstances of clubs can vary significantly, both in comparison to corporate societies but also between different types and sizes of club. While it is important that any of the proposals that are set out in this paper can be implemented in a consistent way, that does not mean there will be no room for flexibility in recognition of the circumstances of each applicant.
42. An example of this is the governance component. Individual clubs may not require the same types of formal governance arrangements as would be appropriate for a large corporate society. However, there is still value in ensuring that the key persons within the club have the appropriate skills for the position that they hold, that there is succession planning to fill vacancies, and that there is accountability to club members.

Fees and annual reporting

43. The Department is currently carrying out a general review of class 4 fees. At present, we are not anticipating changes to fees specifically in connection with any move to performance-based licensing. There will, however, be cost savings to societies that operate at a standard that warrants a longer licence because renewal fees will be due less frequently.
44. Similarly, there are no plans to change the annual reporting requirements that are required under the Gambling Act. These are necessary to ensure ongoing accountability and transparency during licence periods.

Previous three-year licence framework

45. Most readers of this paper will be aware that the Department briefly implemented a different three-year licence regime a few years ago. That system proved to be too complex in operation for many prospective applicants, and also for the Department to administer effectively.
46. The proposals in this document cover some of the same ground as the previous three-year framework, but aim to be more practicable for all parties while still encouraging high standards of practice.
47. One important point of difference is that we do not intend to create a separate application process for longer licences. Operators will submit an application in much the same way they do now, albeit with some additional components as indicated above. That will then be assessed and a determination made about the length of licence that can be awarded.

Potential implementation timetable

48. The timeframe for this project will depend on a wide range of factors, including the scope of any revisions we may make as a result of feedback on the proposals detailed here. An important element will be to ensure that we develop clear guidance and build in appropriate lead times prior to implementing any changes.
49. With those caveats, however, we currently hope it may be possible to introduce the first group of changes (key person due diligence, declaring interests and managing conflicts, and providing harm minimisation practice assurances) in the first half of 2023. The second group of changes require more development, but we hope these could be introduced in the second half of 2023. It would only be once that second group of updates is in place that we would start awarding longer licences.

Feedback

50. We are keen to hear your thoughts on the proposals set out in this paper.

    For example;

    - Do you foresee any difficulties regarding the additional information that we may ask for during the renewal process?
    - Are there any practical issues you think might arise from these proposals, including any hurdles to effective implementation?
    - Is there anything important that you believe we might be overlooking?

51. Please provide written responses to gambling@dia.govt.nz by Tuesday 31 January 2023. Please also contact us at that address if you have any questions prior to the response deadline.

Appendix

Gambling Act 2003

Section 52 - Grounds for granting class 4 operator's licence

(1) The Secretary must refuse to grant a class 4 operator's licence unless the Secretary is satisfied that,—

(a) The gambling to which the application relates is class 4 gambling; and

(b) the applicant's purpose in conducting class 4 gambling is to raise money for authorised purposes; and

(c) the applicant's proposed gambling operation is financially viable; and

(d) the applicant will maximise the net proceeds from the class 4 gambling and minimise the operating costs of that gambling; and

(e) the net proceeds from the class 4 gambling will be applied to or distributed for authorised purposes; and

(f) the applicant is able to comply with applicable regulatory requirements; and

(g) the applicant will minimise the risk of problem gambling; and

(h) any investigations carried out by the Secretary do not cause the Secretary not to be satisfied about the suitability of the applicant or any key person, in terms of subsection (4); and

(i) there are no factors that are likely to detract from achieving the purpose of this Act; and

(j) a key person is not a key person in relation to a class 4 venue licence held, or applied for, by the applicant (except in the case of a class 4 venue licence application, which was not or is not required under section 65(3) or (4) to be accompanied by a class 4 venue agreement).

(2) In assessing financial viability under subsection (1)(c), the Secretary must consider, among other things, the ability of the applicant to reward winners and pay levies, taxes, and other costs, as well as apply or distribute the net proceeds from the class 4 gambling to or for authorised purposes.

(3) The Secretary may refuse to grant a class 4 operator's licence if an applicant fails to provide the information requested by the Secretary in accordance with section 51.

(4) In determining whether an applicant is suitable for a class 4 operator's licence, the Secretary may investigate and take into account the following things:

(a) whether the applicant or a key person has, within the last 7 years,—

(i) been convicted of a relevant offence:

(ii) held, or been a key person in relation to a class 3 or class 4 operator's licence, a class 4 venue licence, a casino licence, or a licensed promoter's licence under this Act or any licence under previous gaming Acts that has been cancelled, suspended, or for which an application for renewal has been refused:

(iii) been placed in receivership, gone into liquidation, or been adjudged bankrupt:

(iv) been a director of a company that has been placed in receivership or put into liquidation, and been involved in the events leading to the company being placed in receivership or put into liquidation:

(v) been prohibited or disqualified from acting as a director or promoter of, or in any way, whether directly or indirectly, being concerned or taking part in the management of, a company under section 382, 383, or 385 of the Companies Act 1993:

(vi) been prohibited from acting as a director or directly or indirectly being concerned, or taking part, in the management of a company under section 299 of the Insolvency Act 2006; and

(b) the financial position and credit history of the applicant and each key person; and

(c) the profile of past compliance by the applicant and each key person with—

(i) this Act, minimum standards, game rules, *Gazette* notices, and licence conditions; and

(ii) the Racing Industry Act 2020 or the previous racing Acts (and any rules of racing made under any of those Acts); and

(iii) previous gaming Acts, and regulations made under previous gaming Acts; and

(iv) a licence or a site approval issued under a previous gaming Act; and

(d) any other matter that the Secretary considers relevant.

(5) The Secretary may take into account matters of a similar nature to those listed in subsection (4) that occurred outside New Zealand.

(6) If the Secretary decides to refuse to grant a class 4 operator's licence, the Secretary must notify the applicant of—

(a) the reason for the decision; and

(b) the right to appeal the decision; and

(c) the process to be followed for an appeal under section 61.

X January 2023

Gambling Policy Team
Department of Internal Affairs
PO Box 805
WELLINGTON 6140

FEEDBACK ON CHANGES TO CLASS 4 LICENSING SYSTEM

Gisborne District Council (GDC) thanks Te Tari Taiwhenua Department of Internal Affairs (DIA) for the opportunity to provide feedback on proposals to better encourage and reward good practice in the Class 4 Licensing system under the Gambling Act 2003 (the Act).

GDC supports proposals to improve overall compliance with the Act. However, GDC contends that important factors are being overlooked, and a broader review of the system is required to effectively reduce gambling-related harm.

Gambling and Gambling-Related Harm in Te Tairāwhiti

Gambling-related harm is a community concern in Tairāwhiti. Community feedback on the district's Gambling Venue Policy reviews over the years has consistently indicated majority support for reducing the number of machines and venues in the region.

There are currently 11 venues operating in Tairāwhiti, all in high deprivation areas and collectively running 159 Electronic Gaming Machines. The region's population has grown approximately 8% since 2013 whereas Gisborne's Gaming Machine Proceeds (GMP) have increased 59.9% since March 2015, despite the number of EGMs decreasing by 23.9%[1]. This is well ahead of the national trend for increasing GMP (43%) and decreasing EGMs (11.7%).

Data on problem gambling in the region is difficult to attain, as the district has not had a dedicated problem gambling support service since 2017. Research by the Ministry of Health has shown that ethnicity and socio-economic factors correlate highly with gambling-related harm[2]. Tairāwhiti's population is 53% Māori, and the district's high levels of deprivation mean problem gambling is likely to be disproportionately affecting certain parts of our community.

In June this year, GDC published a revised Gambling Venue Policy focused on preventing the growth of gambling in Tairāwhiti to minimise gambling-related harm. However, as a local authority, GDC does not have any regulatory oversight of the existing venues nor ability to influence their harm prevention practices. With the sustained growth in gambling, the five-year absence of a dedicated problem gambling support provider, nationally high levels of deprivation and a statistically "at risk" community, it is likely that gambling-related harm is having a substantial impact on the wellbeing of many in our community.

[1] DIA GMP Quarterly Dashboard.

[2] Abbott M. 2006. Do EGMs and problem gambling go together like a horse and carriage? *Gambling Research: Journal of the National Association for Gambling Studies (Australia)* 18(1): 7–38.

Feedback

The following feedback responds to the specific questions raised by DIA regarding the proposed changes to the Class 4 licensing system.

1. Do you foresee any difficulties regarding the additional information that we may ask for during the renewal process? and

2. Are there any practical issues you think might arise from these proposals, including any hurdles to effective implementation?

   GDC considers the changes to be appropriate and provide suitable barriers to entry in a sector where this is lacking. As GDC is not involved in the licensing renewal process, we are not best placed to provide specific feedback on practical implementation issues.

3. Is there anything important that you believe we might be overlooking?

   a) *Ensure appropriately resourced and funded in-person gambling support services are available in all regions.*
   While the proposals focus on improving venues' compliance with their legislative requirement to minimise gambling-related harm, GDC considers that the establishment of problem gambling support services in our district is critical to effectively reduce harm in Tairāwhiti.
   Tairāwhiti has not had a dedicated, regional gambling support provider for five years. This is despite 1.4% of GMP being allocated for such services, suggesting over $600,000 of allocated annual funding remains to be used in the region.

   b) *Reconsider appropriateness of New Zealand's community funding model.*
   The proposals aim to improve due diligence around grant processes. GDC contends that a wider review of the community funding model is required to meet the objectives of the Act. The funding model under the Act redistributes funds often from those least able to afford it, to groups who should have other funding access options.
   Furthermore, the system creates both a reliance on gambling funds and incentives that are inconsistent with the goal of minimising gambling-related harm. This was demonstrated by the New Zealand Community Trust's decision in August 2022 to decline a funding application from Council in response to our Gambling Venue Policy 2022, noting the Policy's focus on reducing the number of venues in the region through a stricter relocation policy and retaining a sinking lid approach. The application declined for the following reason: '*NZCT generally prefers to allocate Gisborne funding for organisations in your community that value the availability, and continued availability, of Class 4 funding.*'

   c) *Provide visibility on DIA's licensing and compliance process.*
   GDC currently has no visibility over DIA's licensing and compliance process for Class 4 venues. This lack of visibility means that during policy reviews, Council is unable to assess if venues are doing enough to minimise gambling harm. As a result, when faced with significant community opposition to gambling venues and no information about harm-minimisation processes to the contrary, Council opts for tighter controls in its Policy.

   We recommend that DIA enable a more transparent compliance process by providing information about how venues are complying with licensing requirements (including due diligence processes, harm-reduction efforts and demonstrating that gambling is not their primary function).

d) *Broader review of the Act and local government authority.*
Council contends that a full review of the purpose, objectives and suitability of the Act is required to have a significant impact on gambling and gambling-related harm in New Zealand. In particular, we recommend that DIA expand local government's authority under the Act to deliver meaningful policies and action and support adequate resourcing to enable this.
The Gambling Venue Policy is a weak tool which can prevent expansion of gambling venues but has no effect on the existing number of venues. Under section 98 of the Act, Council consent is only required when a corporate society and venue operator wishes to increase the number of gaming machines that may be operated at a Class 4 venue, open a new gambling venue or relocate a venue. Council cannot use its Policy to close existing venues, amend the number of machines at venues, or impose other controls.

Community feedback on the district's Gambling Venue Policy reviews in 2015, 2019 and 2022 has consistently indicated majority support for reducing the number of machines and venues in the region. However, the Act does not provide local government with the tools to achieve this community outcome.

If you have any questions regarding this submission, please contact Senior Policy Advisor, Abi Wiseman abi.wiseman@gdc.govt.nz.

Nāku noa, nā

Joanna Noble
Chief of Strategy and Science

Title:	**23-20 Temporary Alcohol Ban – Summer Frequencies Update - February 2023**
Section:	Environmental Services & Protection Compliance & Enforcement - Environmental Health
Prepared by:	Vincenzo Petrella - Team Leader Environmental Health
Meeting Date:	Thursday 26 January 2023

Legal: Yes	Financial: No	Significance: **Low**

Report to COUNCIL/TE KAUNIHERA for decision

PURPOSE - TE TAKE

The purpose of this report is to seek approval from Council for a temporary alcohol ban during the Summer Frequencies Music & Arts Festival (SF), as requested by the New Zealand Police (Police). The previous ban granted by Council from 13th to 15th January 2023 has not been enforced due to the postponement of the event caused by extreme weather conditions. The new ban, if granted, will be in force from 3rd to 6th February 2023.

SUMMARY - HE WHAKARĀPOPOTOTANGA

The Police have again requested the temporary alcohol ban (see **Attachment 1**) because in previous years people have consumed alcohol in these areas during these types of events and members of the public have been subjected to threats and disorder from intoxicated people.

The proposed temporary alcohol ban is to protect the Midway Beach area and environs surrounding the Soundshell during the Summer Frequencies Music & Arts Festival. The subject area for this proposed ban is the area bounded by Awapuni Road, Pacific Street, Centennial Marine Drive, Beacon Street, Salisbury Road and Midway Beach (see **Attachment 2**). The duration of the ban sought for this area is 8am on 3 February 2023 to 8am on 6 February 2023. This temporary ban is used regularly for music events at the Soundshell and covers exactly the same area as the Gisborne District Alcohol Control Bylaw's Christmas ban for the Midway Beach area.

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

RECOMMENDATIONS - NGĀ TŪTOHUNGA

That the Council/Te Kaunihera:

1. **Exercises its power under clause 7.1 of the Gisborne District Alcohol Bylaw to prohibit the consumption, bringing into, or possession of alcohol:**

    a) **From 8am on 3 February 2023 to 8am on 6 February 2023 in the areas shown on the map in** Attachment 3 **being the area bounded by Awapuni Road, Pacific Street, Centennial Marine Drive, Beacon Street, Salisbury Road and Midway Beach.**

Authorised by:

James Baty - Director Internal Partnerships

Keywords: Alcohol bans Gisborne, Summer Frequencies

BACKGROUND - HE WHAKAMĀRAMA

1. Clause 7.1 of the Gisborne District Alcohol Control Bylaw 2015 (Bylaw) allows Council, by resolution, to make a restricted area prohibiting or restricting the consumption, bringing into or possession of alcohol in public places, for the purpose of regulating or controlling a large-scale event ("large scale event alcohol ban").

2. Police have requested that Council impose a temporary large scale event alcohol ban to prohibit the consumption, bringing into or possession of alcohol in areas surrounding Summer Frequencies Festivals.

3. The Police have made the request because in previous years people have consumed alcohol in these areas (sometimes excessively) and experience shows that members of the public are subjected to incidents involving threats and disorder from intoxicated people.

4. Police advise they will have enough resources to enforce the ban in the proposed areas provided that the Council displays adequate signage warning people of the ban.

5. Police are the enforcement agency ensuring compliance with this Bylaw. The maximum infringement fine for the breach of the alcohol ban is $250. Staff believe that the proposed bans will provide an additional tool to assist the Police in dealing with alcohol-related disorder issues and minimising alcohol-related harm and our recommendation is to support this application.

DISCUSSION and OPTIONS - WHAKAWHITINGA KŌRERO me ngā KŌWHIRINGA

6. Before making a large-scale event alcohol ban the Council must be satisfied that the proposed ban meets the following requirement under clause 7.2 of the Bylaw:

    a. Is for a large event and not suitable for consideration for a permanent ban (clause 7.1(a)).

        - The proposed temporary ban is to support large events and would not currently be suitable for a permanent ban, as the areas of the bans have changed over the last few years in response to issues arising. However, when the Alcohol Control Bylaw 2015 is reviewed, these areas could be considered for permanent inclusion.

    b. Gives effect to the purpose of the Bylaw (clause 7.1(b)).

        - The purpose of the Bylaw is to regulate and control the consumption of alcohol in public places, the bringing of alcohol onto public places and the possession of alcohol in public places to reduce the incidents of alcohol related harm.
        - The proposed temporary ban will help to reduce the incidents of alcohol-related harm arising from the large-scale events in Gisborne.

c. The decision-making process complies with the decision-making requirements of Subpart 1 Part 6 of the Local Government Act 2002 (LGA) (clause 7.1(c)).

- Subpart 1 of Part 6 of the LGA requires Council to consider the views and preferences of persons likely to be affected by, or have an interest in, the matter (s78) and the principles of consultation (s82).
- Council is already aware of the views of the Police and the community that has been affected by the events over the last few years and there are no other practicable options to achieve the purpose of the Bylaw and to reduce alcohol-related harm. This temporary ban is only for a short duration and related to large event.

7. In addition, under s147B of the Local Government Act, Council must be satisfied of the following matters before making the temporary alcohol ban.

d. There is evidence to which the Bylaw applies of experience of a high level of crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area.

- It is likely that if a temporary ban is not put in place this year, excessive alcohol consumption and associated disorder would return to the areas.
- The Police advise that during summer concerts at the Soundshell people have been observed drinking alcohol while walking to the events, on the beach, or in the nearby Adventure Playground. In addition, people who may not be attending the concert have been seen congregating in cars and drinking while listening to the music. The temporary ban will significantly reduce these issues.

8. The Bylaw is appropriate and proportionate in the light of the evidence.

- The temporary alcohol bans are appropriate and proportionate in the light of past experiences regarding public place drinking and disorder during these events.

9. The Bylaw can be justified as a reasonable limitation on people's rights and freedoms.

- The temporary alcohol ban will not apply to private property or any premises or business holding a current alcohol licence or special licence. The ban is of limited duration and area and aimed at preventing disorder and harm to members of the public. It can therefore be justified as a reasonable limit on people's rights and freedoms.

ASSESSMENT of SIGNIFICANCE - AROTAKENGA o NGĀ HIRANGA

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: **Low** Significance
This Report: **Low** Significance

Inconsistency with Council's current strategy and policy
Overall Process: **Low** Significance
This Report: **Low** Significance

The effects on all or a large part of the Gisborne district
Overall Process: **Low** Significance
This Report: **Low** Significance

The effects on individuals or specific communities
Overall Process: **Low** Significance
This Report: **Low** Significance

The level or history of public interest in the matter or issue
Overall Process: **Low** Significance
This Report: **Low** Significance

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

TANGATA WHENUA/MĀORI ENGAGEMENT - TŪTAKITANGA TANGATA WHENUA

11. As this matter is of low significance no Māori engagement is required.

COMMUNITY ENGAGEMENT - TŪTAKITANGA HAPORI

12. This matter is of low significance and community engagement is not required.

CLIMATE CHANGE – Impacts / Implications - NGĀ REREKĒTANGA ĀHUARANGI – ngā whakaaweawe / ngā ritenga

13. The matter will not impact climate change.

CONSIDERATIONS - HEI WHAKAARO

Financial/Budget

14. Financial costs will only include replacement of lost/damage signage through the alcohol ban areas and date update. The majority of the signage is still in place from the previous alcohol ban.

Legal

15. Council has the power to make the temporary alcohol bans under clause 7.1 of the Bylaw, and the power is authorised by sections 151(3) and 147B of the LGA.

POLICY and PLANNING IMPLICATIONS - KAUPAPA HERE me ngā RITENGA WHAKAMAHERE

16. There are no policy or planning implications associated with this decision.

RISKS - NGĀ TŪRARU

17. There are no major risks associated with this decision.

NEXT STEPS - NGĀ MAHI E WHAI AKE

Date	Action/Milestone	Comments
As soon as a decision is made.	Give public notice of the temporary ban.	
A few days before the event.	Ensure that sufficient displayed signage is in place.	

ATTACHMENTS - NGĀ TĀPIRITANGA

1. Attachment 1 - SF Temporary Alcohol Ban - Police Report - Feb 2023 [**23-20.1** - 5 pages]
2. Attachment 2 - SF Temporary Alcohol Ban - Midway Beach - Feb 2023 [**23-20.2** - 1 page]

New Zealand POLICE
Nga Pirihimana O Aotearoa

Monday, 16 January 2023

The Secretary
The Gisborne District Licensing Agency
P.O. Box 747
GISBORNE

Re: Application for Temporary Liquor Ban areas for:

- **Midway Liquor Ban – 0800hrs on the Friday 03 February 2023 to 0800hrs on Monday 06 February 2023 from Awapuni Road from Beacon Street to Pacific Street and Centennial Marine Drive (inclusive of beach front from Salisbury Road to the Beacon tower) for the Summer Frequencies Music Festival.**

The Gisborne police have made an application to the Gisborne District Council for a Temporary Liquor Ban to consider and approve the implementation for the Summer Frequencies Music Festival situated at the Gisborne Soundshell located on Centennial Marine Drive, Gisborne.

The Gisborne District Council had granted authority to implement a Temporary Liquor Ban to operate in the area of Midway Beach and Centennial Marine Drive for the Summer Frequencies Music Festival scheduled for 13 January and 14 January 2023. Recent weather conditions caused a postponement of the event and a new application for a Temporary Liquor Ban is sought.

Police are again seeking approval from the Gisborne District Council to consider and approve the continuation of the Temporary Liquor Ban areas.
The Temporary Liquor Ban request is to assist with the Summer Frequencies events, which will cover the period:-

Summer Frequencies Music Festival – 0800hrs on the Friday 03 February 2023 to 0800hrs on the Monday 06 February 2023.

Background:

The Changes to the Sale & Supply of Alcohol Act 2012 increased the threshold to demonstrate the need for continuing to have a bylaw. Previously the council only needed to be satisfied that an alcohol ban area would impact on crime, however they now need to be satisfied that it can be justified as a reasonable limitation on people's rights and freedoms and that the alcohol ban area is appropriate and proportionate in the light of crime and disorder in the area.

The new Act enables the Council to review bylaws for the purpose of prohibiting, regulating, and controlling of consumption or possession of alcohol in public places for managing crime and disorder associated with alcohol consumption. Police can use discretion without being overbearing when dealing with incidents of a minor nature.

It is acknowledged that the Temporary Liquor Ban area would include a few parks and reserves and private dwellings. However, Police believe that no harm should continue to be caused to the community and the benefits of having a Liquor Ban in these areas far outweighs the impact of not having a Liquor Ban over a short period of time.

Police would like to formally request the Gisborne District Council's support for the proposed temporary liquor bans within the Gisborne region over this period.

Application for continuation of Temporary Liquor Ban Areas:

Summer Frequencies Music Festival will be held on Friday 03 February, Saturday 04 February and Sunday 05 February 2023 and will also attract a large crowd of approximately 4,000 people.

Police are therefore seeking Council approval to operate a Temporary Liquor Bans over this period.

The demographic makeup of this influx is mostly persons aged between 18 years to 30 years of age.

At Music Festival's held at the Gisborne Soundshell Police have actively patrolled the Liquor Ban area and observed a noticeable decrease in people drinking alcohol in the liquor ban areas. However there remains a core group of people who continue to come to the Temporary Liquor Ban area near the event and consume alcohol in their vehicles before entering or those who do not have tickets to the Music Festival and come to consume alcohol in the area and/or their vehicles to listen to the Festival.

Police believe that a Temporary Liquor Ban with good signage will continue to minimise the effects of high-volume consumption of alcohol by gatherings of persons in public areas.

Persons who are under the influence of alcohol are more likely to display anti-social behaviour, leading to complaints from members of the public and residents living in this area. It also increases the calls for service to the emergency services.

B. MIDWAY LIQUOR BAN:- (see attachment 1)

- **Midway Liquor Ban – 0800hrs on the Friday 03 February 2023 to 0800hrs on the Monday 06 February 2023 from Awapuni Road from Beacon Street to Pacific Street and Centennial Marine Drive (inclusive of beach front from Salisbury Road to the Beacon tower) for the Summer Frequencies Music Festival.**

The Summer Frequencies Music Festival is a music event that will attract up to 4000+ patrons and will operate out of the Gisborne Soundshell. Previous music events of similar nature have operated from the Gisborne Soundshell with similar numbers of patrons attending.

Police have previously used a Temporary Liquor Ban for these music events and have found them very supportive in reducing the excessive consumption of alcohol as patrons preload before attending the festival event.

The Temporary Liquor Ban will also prevent people consuming alcohol in the Adventure Playground during the event and deter people parking their vehicles nearby and consuming alcohol in their vehicles while listening to the music coming from the event.

Police do not believe that the Temporary Liquor Ban for this area will negatively impact on residents who visit this area. It will give Police the tools required to prevent anti-social behaviour associated with these persons in this area.

Police have and will exercise their discretion to ensure that any enforcement action is appropriate with the circumstances of each individual breach.

The N.Z Bill of Rights Act and Humans Rights Act have been considered by Police in the process of applying for this Liquor Ban.

Police therefore present this submission to the Gisborne District Council for consideration to grant an approval to implement the Temporary Liquor Ban for the period of timeframes sought in the application.

Conclusion:

Police are seeking approval from the Gisborne District Council to consider and approve the continuation of the Midway Temporary Liquor Ban area.

- **Midway Liquor Ban – 0800hrs on the Friday 03 February 2023 to 0800hrs on the Monday 06 February 2023 from Awapuni Road from Beacon Street to Pacific Street and Centennial Marine Drive (inclusive of beach front from Salisbury Road to the Beacon tower) for the Summer Frequencies Music Festival.**

Yours faithfully,

Alexa COLEMAN
Constable ACIH66
Alcohol Harm Prevention Officer
New Zealand Police

(Attachment 1)

MIDWAY TEMPORARY LIQUOR BAN

Alcohol Ban Area

A - Midway Surf Club

Alcohol Ban Area

LYTTON ROAD
PARKINSON STREET
TUPAEA STREET
LYTTON ROAD
Awapuni
SOLANDER STREET
BANKS STREET
STANLEY ROAD
ANZAC STREET
Awapuni School
AWAPUNI ROAD
Adventure Playground
Churchill Park
SALISBURY ROAD
COMMERCE PLACE
Watson Park
PACIFIC STREET
CENTENNIAL MARINE DRIVE
A

Only the building is exempt from the ban

Alcohol ban does not apply to the 'Soundshell' during licence hours

ALCOHOL BAN AREAS ON PUBLIC LAND

GISBORNE DISTRICT COUNCIL

Land Information

Name: liquor_ban_BW
Path: X:\Projects\liquor_ban_BW.mxd
Date: 10/10/2019
User: old

Scale 1:6,000

Te Kaunihera o Te Tairāwhiti
GISBORNE
DISTRICT COUNCIL

Title: **23-7 Resource Management Reforms - Submission on NBE and SP Bills**

Section: Strategy

Prepared by: Paula Hansen - Senior Policy Advisor

Meeting Date: Thursday 26 January 2023

Legal: No	Financial: No	Significance: **Low**

Report to COUNCIL/TE KAUNIHERA for decision

PURPOSE - TE TAKE

The purpose of this report is to agree to the general matters to be included within a submission on the Natural and Built Environment Bill and the Strategic Planning Bill and to delegate the Mayor to approve the final submission.

SUMMARY - HE WHAKARĀPOPOTOTANGA

Government has been working on resource management reforms for the last two years. The reforms propose a new resource management system that will consist of three new pieces of legislation - the Natural and Built Environment Act (NBA), the Spatial Planning Act and the Climate Adaptation Act. To help support the new system, a national planning framework will also be developed to bring together all the current National Policy Statements and National Environmental Standards into one document.

The Natural and Built Environment Bill (NBA Bill) and the Spatial Planning Bill (SPB) were introduced to parliament on 15 November 2022, with the first reading on 22 November 2022. The Bills are available online:

- Natural and Built Environment Bill (807 pages)
- Spatial Planning Bill (46 pages)

The Environment Select Committee (Select Committee) has now released the NBA Bill and the SPB for submissions. The submission period closes on 5 February 2023, but Council has been granted an extension to 19 February 2023.

Previous engagement and consultation has centred on the overall intent of the Bills and the new system. Previous content lacked the detail around what the reform would mean in practice and how Council practices may need to change.

Proposed substantive submission points are centred on the following topics:

- Regional Planning Committee (RPC) structure
- Impacts on Council's operation model/link between the Bills and the Local Government Act 2002 (LGA)
- Diminished local voice

- Relationships to tangata whenua
- Independent Hearings Panels (IHP)
- Regional Spatial Strategies (RSS) and Natural Built Environment Plans
- National Planning Framework (NPF) and Freshwater Working Group
- Consenting concerns
- Monitoring, compliance and enforcement concerns
- Transition and sequencing
- Funding
- Other matters

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

RECOMMENDATIONS - NGĀ TŪTOHUNGA

That the Council/Te Kaunihera:

1. **Agrees on the substantive matters highlighted within this report to be included in a submission on the Natural and Built Environment Bill and the Spatial Planning Bill, subject to any amendments and further contributions from Council.**
2. **Delegates the Mayor to sign off on the final submission to be submitted on the Natural and Built Environment Bill and the Spatial Planning Bill.**

Authorised by:

Joanna Noble - Chief of Strategy & Science

Keywords: reform, resource management, natural and built environments, spatial planning, submission

BACKGROUND - HE WHAKAMĀRAMA

Overview of Resource Management Reform

1. Over the past two years, the Government has been developing a new resource management system for Aotearoa New Zealand. Central to this reform is the replacement of the Resource Management Act 1991 (RMA) with three new integrated acts.

2. The proposed new system seeks to[1]:
    - move from an effects-based system to an outcomes-based one that avoids harmful cumulative effects
    - reduce costs for people, including infrastructure providers, home builders and owners, and developers
    - provide more effective and consistent national direction
    - move to more regionalised, integrated and strategic planning
    - substantially reduce the number of local government resource management plans
    - simplify and standardise processes
    - reduce the need for consenting while ensuring environmental safeguards are still in place.

3. An exposure draft of the Natural and Built Environment Act (NBA), was released for public consultation over July 2021. This set out key aspects of the Bill such as its purpose and principles and related provisions. A report outlining the contents of the exposure draft, and a staff submission to the Select Committee, were tabled at the Council meeting on 26 August 2021 (Report 21-172). A draft submission gained approval at the 24 February 2022 Council meeting (Report 22-14).

4. Key points of Council's previous submission in February 2022 (Report 22-14) were:
    - General support for reform of the resource management system.
    - The local voice must be captured and fed into each component of the system.
    - The new system needs to be well-integrated and aligned with other Council roles and functions.
    - Clear policy direction and support is required, particularly from Central Government.
    - Existing barriers should be removed, and new tools added, to enable meaningful partnership with mana whenua.
    - Capacity, capability and resourcing for mana whenua and Council will be critical.

5. The Natural & Built Environment Bill (NBA Bill) and Strategic Planning Bill (SPB) were introduced to Parliament on 15 November 2022 with the first reading on 22 November 2022. They are expected to be passed into law by the end of 2023. The Bills are available online:
    - Natural and Built Environment Bill (807 pages)
    - Spatial Planning Bill (46 pages)

6. The timeframe for the Climate Adaptation Act (CCA) is unclear; however, it is expected to be introduced to Parliament in 2023.

[1] Our-future-resource-management-system-overview.pdf (environment.govt.nz) (page 3)

7. To support the new system, and central to its success, is the National Planning Framework (NPF) currently being developed. There has been very little information available to date on what this may look like other than it will consolidate all existing national direction. Engagement is likely to start in early to mid-2023.

8. To support engagement on the Bills, the Ministry for the Environment (MFE) released three documents:

    - Our future Resource Management System: Overview
    - Our future Resource Management System: The need for Change.
    - Supplementary Analysis Report: The new resource management system.

9. These documents provide a high-level overview of the process undertaken, the new system and how everything is expected to fit together. They also explain key terminology such as limits and targets and how they relate to each other. The supplementary paper discusses the key shifts in the resource management system. Staff will present a brief overview of key points at the meeting.

DISCUSSION and OPTIONS - WHAKAWHITINGA KŌRERO me ngā KŌWHIRINGA

10. The Select Committee is seeking feedback on both the NBA Bill and SPB. The submission period on the two Bills closes on 5 February 2023; however, we have been granted an extension to 19 February 2023.

11. The NBA Bill has substantially more detail available than was released in the exposure draft. The exposure draft contained information on the overall intent of the Bill with little on the actual content, in particular around consenting processes, plan making processes, role of the NPF, how local voice will be captured and monitoring requirements. The level of detail in the NBA Bill and timeframe for the submission has limited what staff could consider in terms of what it will mean for Council practices and how these may need to change.

12. The Strategic Planning Bill (SPB) is relatively concise, and staff generally support the intent of this Bill, although there are some concerns regarding the proposed implementation agreements and the extent to which delivery partners (aside from councils) will be held accountable. These matters are well traversed in the draft submissions prepared by LGNZ and Taituarā. Therefore, we intend to focus Council's submission on the Natural and Built Environment Bill (NBA Bill) – noting that this is the Bill which contains detail on matters such as the Regional Planning committee.

13. Council staff have had access to draft submissions from the regional sector (Te Uru Kahika), Taituara and Local Government New Zealand (LGNZ) and attended several hui and webinars. Staff generally support the content contained in the draft submissions prepared by these organisations. We have also received feedback from the Consents and Monitoring, Compliance and Enforcement Teams.

14. Overall, there is general support for the following aspects:

    - The NPF could be a valuable tool for identifying conflicts between different national direction/priorities and providing guidance on options/how to resolve those conflicts.

- The RSS should provide coherent direction to enable sustainable growth and development to allow for more certainty to investment, consenting and development processes. This includes the potential to incorporate climate change response considerations (adaption and mitigation) within RSS.
- Involvement of government in RSS development *if* government is speaking with 'one voice' on strategic planning matters (mandated single voice from Government on planning under the new system).
- Development of one Natural and Built Environment Plan (NBA plan) per region with ability to develop catchment or area-based provisions within those plans. This reflects the approach taken in Tairāwhiti under the existing legislation.
- The recognition of Te Ao Māori and mātauranga Māori, giving effect to Te Tiriti o Waitangi, and the shift towards a more strategic and mandated role for mana whenua in the system.
- The introduction of the concept of Te Oranga o te Taiao within the purpose of the NBA.
- The intent to support a move to integrated digital platforms as part of the long-term support for the reforms.
- Increased strengthening of the compliance monitoring and enforcement role and new civil enforcement tools which could lead to good outcomes without having to go through judicial process.
- Prohibition of insurance for fines and infringements, new offence for contravening a resource consent and clarity round cost recovery for monitoring permitted activities.

15. There are significant concerns regarding the current design of the reform package, and whether it will achieve the stated outcomes. The table below outlines our potential substantive submission topics on the NBA Bill and SPB where changes are suggested.

Topic	Brief Summary of Potential Submission	Summary of Potential Outcome Sought
1 **Regional Planning Committee (RPC) structure** (refer Schedule 8 of the NBA Bill) • The RPC will be responsible for developing RSS and NBA Plans. • RPC is to be made up of at least six members with no limit to maximum numbers. There is to be at least one member appointed by council and two appointed by the Māori appointing body or bodies for the region. • There will be one central government representative on the RPS when developing an RSS, appointed by the Minister. • The RPC must act independently of the host council (and other councils). • A regional planning committee may establish subcommittees to provide advice as it sees fit.	• The RPC is to be constituted and operated under the NBA rather than the LGA. This creates a disconnection between responsibility and accountability with little to no electoral mandate. The RPC has a lack of accountability to councils and communities, despite councils being accountable for nearly everything the RPC does. • Undermines accountability of Council governance for policy decisions. Also undermines the LGA purpose and breaks linkage to other Council strategy and outcomes risking perverse outcomes and diluting Council's environmental functions and stewardship role. • The host local authority is essentially an administering authority for an LGA-type joint-committee; it provides administrative support to the RPC and secretariat and is required to fund and resource the RPC (but without any oversight or accountability mechanisms). • Unclear if the council appointees are to be elected members or not. • Sub-committees are only useful as far as the RPC delegate powers and responsibilities. They may provide an avenue for mana whenua to have additional input; however, they would have no significant decision-making power unless this is delegated by the RPC. • An RPC that is independent of Council may reduce the attractiveness to join the sector as an elected	• Without structural reform, it could be much simpler if the RPC is a joint committee under the LGA. • We note that the RPC could transfer powers back to council, except the power to approve the final plan; however, to keep it simple we think it better that the RPC is replaced with a joint committee under the LGA because: - Accountability is clear. - Connection to the Long Term Plan is not weakened, which enables support of continued implementation investment in supporting functions such as land management, education and infrastructure. - Process known and therefore will be easier to implement. - Local democratic decision-making is not undermined (s10 LGA). - Implementation of policy is better enabled/connected. • Council representatives should be elected members to ensure some democratic accountability. • Need to rethink the role of Sub-committees as they would add an additional layer of bureaucracy that needs the secretariat support and that mana whenua would have to engage in.

Topic	Brief Summary of Potential Submission	Summary of Potential Outcome Sought
	member, if not well thought out this has the potential to devalue the role of planning and local government.	
2 Impacts on Council's operation model and the link between the Bills and the LGA (refer Schedule 8 of the NBA Bill) • The RPC appoints a director of the secretariat to support it in carrying out its functions, duties, and powers. • The director of the secretariat of a is responsible for: - providing technical advice and administrative support - establishing and facilitating collaborative working arrangements with and between local authorities and Māori in the region for the purposes of plan making - ensuring that the secretariat has the technical expertise and skills in local kawa, tikanga, and mātauranga of the iwi and hapū in the region: - providing administrative support to independent hearings panels • The director must consult the RPC on a resourcing plan for staffing the secretariat. • The director must appoint any employees necessary for carrying out its functions, duties, and powers. • The director and employees are employees of the host local authority. • The RPC will have legal autonomy to initiate and	• Significant uncertainty about RPC membership, role and function, and the arrangements for supporting them. This includes how the RPC will fit within Council's current statutory roles, functions and accountabilities, and associated risks. • The proposed working arrangements between the RPC, secretariat and Council are complex, unfunded, and potentially unworkable. • RPCs should be required to work within the accountability and financial constraints that Council prescribes. • Concern that as the sole Council in the region, key staff from fields such as policy and planning, science, comms and engagement support, and maori responsiveness will be appointed to the Secretariat. This will make it difficult to fulfil remaining policy and plan-making roles and deliver services to the communities they are accountable to. • Concerns about imposing a requirement on councils to be legally responsible for the directors' legal obligations when control over the director and secretariat rests with the RPC. This raises significant employment law, health and safety obligations and creates increased risk of improper expenditure of public money. • While the RPC has decision-making independence, it is not a separate (independent) legal entity, but a committee of Council. As a result, the decisions made by an RPC will be a	• Supportive of regional councils fulfilling the role of the RPC secretariat, provided the issue of funding is addressed. • Request that the NBA Bill is amended so that the director is appointed by Council, and that the RPC and director be held accountable to Council through increased reporting mechanisms. • The new system needs to be well-integrated and aligned with other Council roles and functions. • Ensure the RPC will align and integrate with Council's current statutory roles, functions and accountabilities. This includes RPC's membership composition and procedural decision-making powers, as well as working arrangements between the RPC, secretariat and host local authority. • Funding and approval of Council expenditure needs to follow LGA processes. Council is responsible and accountable for that expenditure. Council will have no control on the RPC program of projects and the level of funding needed to support the new system. External funding will be required to support to fund the implementation of the new system. • There should be some bottom lines where the employee/employer relationship matter needs to be addressed. • Central government support may be required for regions where there is already significant affordability and equity challenges – otherwise there is a significant risk that the intended outcomes of the

Topic	Brief Summary of Potential Submission	Summary of Potential Outcome Sought
defend legal actions.	decision of Council. This raises a question in relation to the legal status of the RPCs, and how they are practically supported through court proceedings. • Risk of duplication of planning and support resources of the RPC and Council. This will be particularly evident here in Tairāwhiti where we are the only council. The integrated nature of our Strategic Planning Team means that the support/services provided to other Council teams may be removed or reduced with additional requirements for the RPC and unless funding is provided a similar level of resource. This would compound existing issues on staffing resources within Council to progress work required. There are 'peak' periods where resourcing is particularly stretched and capacity is already problematic, for example development of Long Term Plan or when processing water takes with a common review date. • Expectation that council can and will fund the RPC, the RSS, the NBA plan and implementation plans. As a unitary authority we are the only entity funding the requirements of the new acts in Tairāwhiti. Funding will come from rates. Council must be mindful of the ability of the community to pay when determining projects. Tairāwhiti has long-term documented affordability and equity challenges. • While Council has an agreed budget in the Long Term Plan to review our resource management plan, Council also has control over that budget and how it is spent. Under the new regime, Council	reform will not be achieved.

Topic	Brief Summary of Potential Submission	Summary of Potential Outcome Sought
	will have little control of how and when the budget will be spent or even how much budget will be made available. • Some existing agreements with Council on resource management matters may no longer be given effect to and may need to be renegotiated with the RPC. • Policy making is now separate from interpretation and application – the policy – consents – compliance cycle has in effect been broken.	
3 **Diminished local voice** (refer clauses 643-647 of NBA Bill) • Councils may prepare a Statement of Community Outcomes (SCO) which is a summary of the views of the community within a region. • Council may also prepare a Statement of Regional Environmental Outcomes (SREO) which is a summary of significant resource management issues of the region. • The RPC must have 'particular regard' to both the SCO and SREO when preparing or changing NBA plans and Regional Spatial Strategies (RSS).	• SCO and SREO are the main mechanisms for supporting local voice outside the submission process, but these are not mandatory and there is very little direction on their development. • The direction to have regard to SCO and SREO is relatively weak, which means that the local voice may be discounted during plan development and decision-making. This is of concern given the potential for conflict between the nine system outcomes contained in the NBA Bill. • Stewardship of the natural environmental appears to eb weakened compared to the current system due to the loss of the planning hierarchy. There will no longer be a Regional Policy Statement, which currently plays an important role in enabling regional councils to provide a broad direction and framework for resource management within their regions and set local environmental 'bottom lines'. This significantly undermines the function of regional councils. • From a Tairāwhiti perspective, there is a concern here that under the proposed Bills the benefits of	• Preparation of SCOs and SREOs should be mandatory rather than discretionary, with the scope and detail of the SCOs and SREOs further prescribed in the legislation. • The scope of SREOs should be similar to current regional policy statements and outline significant issues and priorities for resource management in the region. • Seek that RPCs be required to "give effect" to SCOs and SREOs, or at the very least ensure their decision-making is "not inconsistent with" SCOs and SREOs. • The extent that LGA provisions apply to the preparation of SCOs and SREOs must be addressed.

Topic	Brief Summary of Potential Submission	Summary of Potential Outcome Sought
	the Unitary model are eroded through disconnected SCOs/SREOs and the Spatial Plan	
Relationships with tangata whenua (refer section 4, section 6, schedule 7 NBA Bill) • Decision makers will be required to "give effect to" the principles of Te Tiriti o Waitangi. • Decision makers must recognise and provide for the authority and responsibility of each iwi and hapū. • RPC required to initiate Engagement Agreements with Maori to agree on how iwi, hapū and other Māori organisations will be engaged in NBA Plan and RSS development, and how the RPC will fund participation. Agrees funding too.	• Support the greater emphasis on Te Tiriti o Waitangi, including the requirement to "give effect" to the principles of Te Tiriti, and providing a more strategic role for iwi/Māori in the resource management system, but consistent implementation and capacity of maori to participate to the extent anticipated is a concern. • Although there is much to improve on with regard to building meaningful relationships with Māori, there is a concern that the proposed changes will affect existing relationships that have been established over the past decades through a variety of mechanisms, ranging from being enshrined in Treaty Settlements that were many years in the development, to joint management agreements, to more informal arrangements such as Memoranda of Understanding. The RPC model risks elevating some representation above place-based relationships and creates further issues around role clarity and how councils can best meet their responsibilities to Māori. • The RPC appears to be able to negotiate funding agreements with maori groups without Council being party to the discussions. This creates immediate budgetary implications (as the RPC is funded by Council) and could be precedent setting for other policy/planning work that remains with the local authorities. • Engagement agreements between RPCs and iwi/Māori groups may duplicate or be inconsistent	• Clear guidance on how to give effect to Te Tiriti should be interpreted and implemented should be provided. Central government should clearly demonstrate and document how they are giving effect to Te Tiriti principles through development of the NPF and how they make funding and investment decisions to support implementation of the RM reform package. • Funding support for iwi/hapū to be provided by Central Government to ensure iwi/hapū can participate in the new system. • Proposals for iwi representation on RPCs will require careful navigation of existing relationships and arrangements if they are to be workable. It is critical that iwi values and aspirations are recognised and mana whenua is enabled through this process. Some form of independent facilitator endorsed by Maori and funded by central government may assist. • Consider including provision within the legislation that allows plan-making to continue if it has not been possible to form the RPS in the way envisaged by the Bill. • Existing barriers should be removed, and new tools added, to enable meaningful partnership with mana whenua. • Recognition that it will take considerable time to define how this process can be made to work, and to put the appropriate arrangements in place. This will require significant thought to transition processes and how to prepare both councils and Māori for the

Topic	Brief Summary of Potential Submission	Summary of Potential Outcome Sought
	with existing arrangements between councils and iwi/hapū groups There is potential for much confusion around what engagement agreement applies. It takes considerable time to build relationships and it seems like these are now being put aside. • There is a risk that RPC establishment does not occur as swiftly as anticipated while issues with representation are worked through, recognising the sometimes complex and nuanced dynamics between iwi and hapū, and other maori groupings. Note – may need many months lead in time to even start these negotiations, and they will probably be multiple. Especially if going to hapū level. • Concern that the responsibility to fund the increased role of iwi/hapū in the new system will fall almost exclusively on local government. Government funding is needed to ensure meaningful and consistent engagement and contribution into the new system by Māori. Funding should also support capacity and capability building of Māori.	changes, and to ensure clarity of roles, responsibilities and expectations.
Independent Hearings Panels (IHP) (refer Schedule 3 of NBA Bill) • The Independent Hearing Panel hears submissions and makes recommendations to the RPC on the proposed NBA Plan. • An IHP is established for each region by the Chief Environment Court Judge comprising: - a chairperson (usually an Environment Judge)	• No accountability back to policy process, or back to democratically elected councils. • Further blurs separation of executive functions from judicial role. • Further separates responsibility for administration from accountability, risking disconnect. • The only substantive role for Council in the IHP process is as a submitter. • Concerns about funding and resourcing of IHPs.	• IHPs should ensure that their recommendations "give effect" to the SCOs and SREOs (or alternatively ensure their recommendations are "not inconsistent with" the SCOs and SREOs). • RPC must seek advice from affected councils on any decision to accept or reject an IHP recommendation and if the RPC does not adopt any comments or advice received, it must provide reasoning for doing so.

Topic	Brief Summary of Potential Submission	Summary of Potential Outcome Sought
- 3 to 6 members from the regional pool - up to 2 additional members from the regional pool if the Minister agrees • The regional pool comprises— - all Environment Court Commissioners in New Zealand - all iwi-approved Commissioners in the region - candidates nominated by iwi and hapū in the region - candidates nominated by the RPC and Council	NBA Bill is silent on who will fund the IHP and if this falls to councils there may not be sufficient resourcing to establish IHPs.	
Regional Spatial Strategies (RSS) and Natural Built Environment Plans (NBA plans) • The RSS is future focussed and will be the key planning document to provide strong regional direction for NBA plans. • NBA plans will provide a framework for the integrated management of the natural and built environment. • NBA plans are to give effect to the NPF and be consistent with the RSS.	• Strategic spatial planning is about implementing community outcomes and council activities. Currently, Long Term Plans play an important role in informing regional and district planning. • The expansive decision-making powers of the RPCs, including the power to make plans final without formal decision-making by constituent councils may undermine local democracy. • We are concerned about whether Council will be able to appeal RPC decisions – and if so, the practical challenges associated with bringing such an appeal. • Communities will need to understand the importance of engaging with these planning processes. • The SPA needs to provide a link between RSS and the outcomes in NBA plans. There needs to be a clear and direct relationship between RSS and the NPF and NBA plans. • Clarity over the scope of NBA plans in relation to the NPF and RSS is needed.	• The SPA needs to be clear about the purpose of an RSS and is to set clear strategic direction for the future management of a region and be at least consistent with SCOs and SREOs. • Matters resolved in an RSS are not able to be re-litigated in the development of an NBA plan, and that evaluation requirements for NBA plans do not undermine the decisions made in RSS. • Spatial planning, land transport and community infrastructure must be integrated. Further mechanisms for local government influence over spatial planning is needed. • RPC should be required to seek advice from affected councils on any decision to accept or reject an IHP recommendation.

Topic	Brief Summary of Potential Submission	Summary of Potential Outcome Sought
	• The role of councils in the preparation of RSS and NBA plans needs to be strengthened. • Support the requirement for the RPC to refer draft RSS and NBA plans back to councils for consideration and feedback prior to notification and referral to IHP.	
National Planning Framework (NPF) and Freshwater Working Group (refer part 3 and sections 689-693 of the NBA Bill) • The first NPF will amalgamate existing national direction and provide for limits and targets. • Environmental limits are set to - prevent degradation of ecological integrity and/or protect human health. - to protect human health. • The NPF is required to provide direction on each system outcome and direction to help resolve conflicts. • The NPF will be secondary legislation and is not available for consideration in conjunction with the draft Bills. • Resource allocation principles of sustainability, efficiency and equity are included. • The Freshwater Working Group must report to the Minister on recommendations for freshwater allocation and a process for engagement between the Crown and iwi and hapū, at the regional or local level, on freshwater allocation by 31 October 2024.	• The NPF will be fundamental in establishing New Zealand's environmental management framework and priorities. The NPF is the part of the new system, which appears to be the key mechanism to address conflicts and without viewing it we cannot judge if Government is expecting too much from the NPF. The NPF is supposed to help resolve the conflict between different national direction (and likely legislation too). • It is not yet clear how regional priorities and variances will be reflected in the NPF. • NPF potentially removes the ability of local communities to accommodate regional and local variation in RSS and NBA plans. • The NPF alongside the RSS are critical for determining and addressing hierarchy of outcomes to guide decisions. • The main avenue for environmental considerations is intended to be via the NPF. • Proposals for the NPF are not yet visible, limited in scope, will create frustration, and further undermine the purpose of regional councils. Further details are needed to make an informed submission. • The NPF is focussed on ecological integrity - this	• The NPF should provide a framework that is enabling, flexible and responsive to local issues – one that allows communities to respond to specific resource management issues 'on the ground'. • Local government, iwi and communities should be involved in development of the NPF. • The NPF has a key role in assisting NBA plans to resolve conflicts. Resolution of conflicts at a policy level rather than at a consent level is one of the key approaches of the new system. • Ensure that maori are appropriately and meaningfully engaged during developed of the NPF so that is upholds Te Oranga o te Taiao. • Clarify the intended application of the resource allocation principles within plan making, consenting and the mahi of the Freshwater Working Group. • Amend the timeframe for the provisions of the Freshwater Working Group report on location so that it does not conflict with the statutory timeframes in place under the RMA for freshwater planning.

Topic	Brief Summary of Potential Submission	Summary of Potential Outcome Sought
	may not encompass all aspects necessary to uphold Te Oranga o te Taiao. Under the NBA Bill, te Oranga o te Taiao means— *(a) the health of the natural environment; and* *(b) the essential relationship between the health of the natural environment and its capacity to sustain life; and* *(c) the interconnectedness of all parts of the environment; and* *(d) the intrinsic relationship between iwi and hapū and te Taiao* • If the NPF does not appropriately reflect the duty to uphold Te Oranga o te Taiao, it places creates undue conflict and uncertainty during regional NBA plan making. • It is unclear how the resource allocation principles relate to the NPF and the remainder of the NBA Bill. Similarly, there is no clear linkage with the allocation statement development by the Freshwater working group is unclear. • While we support central government addressing the long-standing issue of freshwater allocation and Crown engagement with iwi and hapū on this matter, the timing of the Freshwater Working Group report has the potential to undermine the freshwater planning process required to be undertaken under the existing legislation (RMA). Notification of regional plans and freshwater catchment plans, including allocation frameworks made under the current constraints of the RMA, is likely to occur toward the end of 2024 to meet the statutory deadline. These plans will not be able to	

Topic	Brief Summary of Potential Submission	Summary of Potential Outcome Sought
	take into account the recommendations of the freshwater working group – this is likely to cause confusion and create distrust and potential litigation.	
Consenting concerns	• Reforms may not streamline/reduce bureaucracy in the consenting parts of the system and, in-fact, may do the opposite. Likely to be exacerbation of current resourcing issues, particularly when transitioning to the new system. • We do not agree that there will be fewer applications made to Council overall, as permitted activities are likely to result in more applications for certificates of compliance. • Policy making is separated from interpretation and application breaking the policy cycle. The RPC process will be too slow to address emerging issues and consenting process will have lost the flexibility to 'plug' the gap as it currently does. Accountability for notification decisions sits with the councils whereas these are policy decisions of the RPC – councils will be subject to litigation on these points. • Our regional consents require mostly scientific interpretations – if there is a disconnect from policy and science then our ability to turn around consents is impacted. • A failure to get the notification provisions right may stifle innovation or prevent the system from addressing emerging environmental issues in a timely way. • Notification procedures, the 'special circumstances' test, and the status of Māori as	• Timeframes for processing consents should be realistic and reflect the scale and significance of the application. • Council reporting on how well timeframes have been complied with, and a punishment approach such as refunding of application fees when timeframes are exceeded, causes a focus on process over substance and outcomes. • With a broader scope for permitted activities, digital tools will improve the efficiency and effectiveness of certification and compliance processes. • The Government should also provide leadership on a standardised digital system for managing consent applications. • There should be investment in digital templates that guide users through the process and analyse problems and issues as they develop for self-improvement of the system. • The new system needs to be able to deal with 'poor applications' through incentivising pre-application and post-lodgement processes that allow applicants and councils to work together on information requirements. • Standardised conditions that are measurable and easily monitored and complied with should be set in the NPF where possible, with allowance for local conditions.

Topic	Brief Summary of Potential Submission	Summary of Potential Outcome Sought
	affected parties, need further review. • Limited use of alternative dispute resolution process. • Area of interest likely not to mean much for iwi/hapū. Māori require data sovereignty for their own records, and they should determine the access and sharing of it. • Clarification needed for a number of clauses in relation to resource consent processes.	• A funded increase in the capacity and capability of all actors in the system, including applicants, councils, and affected parties/submitters, will make a significant contribution to an efficient and effective consent system. • Ensure iwi/hapū groups maintain data sovereignty over their information.
Monitoring, compliance and enforcement concerns	• Loss of the ability for fines to be paid to authority instituting prosecution. • Abatement and infringement notices are important tools for non-compliance with regulations stipulating set forms and content for them. These tools won't be available to Council if the regulations are not amended at the same time as the relevant Bill provisions come into force. • Need to increase penalties for obstruction of an enforcement officer. • Capacity of judiciary to support increased regulatory activity. • Permitted activities regime may divert compliance resources away from activities that have more significant adverse effects. • Need to ensure compliance tools around water shortage directions are carried through from RMA. • Formal warning process is a good tool to establish a history of non-compliance. • Powers of entry for compliance inspection does not include the ability to monitor National Environmental Standards,	• Ability to receive fines from prosecutions need to be retained. Fines help to pay for the cost to undertake prosecutions and don't always cover Council's costs. This will disincentivise Council to take prosecutions as it will come at the cost of the rate payer. • Regulations are needed to enable abatement and infringement notices and must be amended at the same time as the relevant Bill provisions comes into force. • Need to codify the use of formal warnings to enable a consistent and robust approach to their use as a way of dealing with non-compliance. • Provide the ability for warranted enforcement officers to be able to use the power of entry provisions to monitor National Environmental Standards. • Provisions under the NBA and NBA plan need to be very clear as to whether an activity complies or not. This will support monitoring compliance and enforcement of the NBA plan and enable convictions.
Transition and sequencing	• Other reforms will likely have an impact on how	• Other reforms need to be considered alongside

Topic	Brief Summary of Potential Submission	Summary of Potential Outcome Sought
	resource management matters are responded to, in particular what implementation plans for RSS cover and how they connect with the wider council roles and functions. • Revolutionising the system requires significant upfront bureaucratic processes before benefits start to be realised which risks social license for reforms to be eroded long before any benefits on the ground can be achieved. • Risks duplication of effort and rework once other related reforms are settled (Three Waters, Local Government Reform, and Climate Change Adaptation Act). • Opportunity exists in the transition to evolve the system (allowing benefits to start accruing from day one).	resource management reforms to ensure appropriate integration of all reforms to reduce duplication of effort. • A well planned and resourced transition to the new system will be critical for success. • Transformation of the type proposed by government requires transformational funding. We are concerned that there is insufficient funding available to councils and Māori to achieve the government's objectives, particularly for capacity and capability building which will underpin the success (or not) of the reforms. • Recommend that transition planning and working collaboratively with local government, mana whenua and others impacted to design and roll out the new system with an appropriate level of government funding in place.
Funding	• Current provisions provide little clarity about councils' relationship with secretariats and influence over RPC budgets and resourcing. If the Government wants to remove councils from the plan-making process by developing new bureaucracy, then it should fund the plan development, rather than allowing this to fall on the excluded councils' communities. • Concerned that councils and iwi/hapū will have to fund the strengthened role of iwi/hapū in the system. As the direct Treaty Partner, Central Government must ensure that Māori are properly resourced to participate in the new system, rather than passing that cost to local communities and Local Government. Central Government must contribute.	• Councils shouldn't be responsible, accountable and liable for decisions that they have no control or oversight on. • Funding needs to be available to iwi/hapū to build their capacity and capability *before* any RSS or NBA plan is developed or have mechanisms in place to support meaningful participation and engagement. • Adequacy of funding overall is a concern.

Topic	Brief Summary of Potential Submission	Summary of Potential Outcome Sought
	• Funding is required for – development of RSS and NBA Plans, RPC, secretariat, IHP, and Māori participation. The primary source of funds will be from Council obtained through rates. • Council will have little control of budgets in terms of the RCP, secretariat, director, information expected from council, development of NBA plan and RSS. Affordability to rate payers is not an aspect that the RPC needs to consider whereas Council does.	
Other matters	Minor matters such as clarification sought on specific clauses.	Examples include: • Consent authority does not need to hold a hearing regardless of whether one was requested or not – what would justify not holding a hearing if someone requested it? A controlled activity must be processed without public notification. Does this mean limited notification is still an option?

ASSESSMENT of SIGNIFICANCE - AROTAKENGA o NGĀ HIRANGA

Consideration of consistency with and impact on the Regional Land Transport Plan and its implementation
Overall Process: **Medium** Significance
This Report: **Low** Significance

Impacts on Council's delivery of its Financial Strategy and Long Term Plan
Overall Process: **Low** Significance
This Report: **Low** Significance

Inconsistency with Council's current strategy and policy
Overall Process: **Medium** Significance
This Report: **Low** Significance

The effects on all or a large part of the Gisborne district
Overall Process: **High** Significance
This Report: **Low** Significance

The effects on individuals or specific communities
Overall Process: **High** Significance
This Report: **Low** Significance

The level or history of public interest in the matter or issue
Overall Process: **Medium** Significance
This Report: **Low** Significance

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

TANGATA WHENUA/MĀORI ENGAGEMENT - TŪTAKITANGA TANGATA WHENUA

17. No engagement with tangata whenua has occurred during the preparation of the draft submission.

18. Capacity and capability for tangata whenua engagement and participation in the new system will be an ongoing challenge – particularly around funding, resources, time constraints and representation. Our submission highlights the above challenges.

19. It is recognised that the RMA connects with over 70 Te Tiriti settlement arrangements. Engagement with post-settlement governance entities is underway by the Government to reach agreement on how to continue to honour these arrangements and those in other related legislation.[2]

[2] Our-future-resource-management-system-overview.pdf (environment.govt.nz) (page10).

COMMUNITY ENGAGEMENT - TŪTAKITANGA HAPORI

20. No engagement with the community has occurred during the preparation of the draft submission.

21. Ensuring the community are informed about the implications of the new system will be important. Future engagement for the Tairāwhiti Resource Management Plan (TRMP) review will be a suitable vehicle to convey messaging on the reform.

CLIMATE CHANGE – Impacts / Implications - NGĀ REREKĒTANGA ĀHUARANGI – ngā whakaaweawe / ngā ritenga

22. There are no climate change impacts of submitting on the document.

CONSIDERATIONS - HEI WHAKAARO

Financial/Budget

23. There are no financial impacts of submitting on the document.

Legal

24. There are no legal considerations that need to be taken into account when submitting on the Bills.

POLICY and PLANNING IMPLICATIONS - KAUPAPA HERE me ngā RITENGA WHAKAMAHERE

25. Direction from Government is for local authorities to push ahead with their current policy work programmes under the RMA – as the new system is not yet finalised – and transitioning is expected to take about 10 years for all RSS and NBA plans to be in place.

26. It has been proposed that transitioning occurs with support from Government and that a limited number of councils undertake the transition at any one point in time. This is to help spread limited resources needed to implement the new system.

27. Implications of the resource management reform for Council's current and future policy work programmes could be highlighted in the draft submission. The draft submission could also flag Council, as a unitary authority at the start of its full combined plan review, as a good candidate for plan-making 'test-cases' or pilot studies with MfE under the new system.

RISKS - NGĀ TŪRARU

28. There are no major risks associated with submitting the document.

29. Key risks associated with the resource management reform have been communicated to Council previously (Report 21-172).

30. New risks identified on the reforms following the release of the Bills include:

- diminishing and overriding local voice;
- limiting community voice to submission processes;
- absence of Local Government democratic decision-making processes, with no recourse for councils to influence decisions;
- potential duplication of roles and functions between RCPs and councils, with limited resources; and
- potential significant additional costs that will be expected to be paid by councils for the RSS, NBA plan, implementation of plans, assessing permitted activities and monitoring of permitted activities, while having no say over decisions made by the RPC.

NEXT STEPS - NGĀ MAHI E WHAI AKE

Date	Action/Milestone	Comments
19 Feb 2023	Submit Council's final response	Mayor delegated to approve final submission

Title: **23-15 Proposed Submission on Water Services Legislation Bill 2022**

Section: Chief Executive's Office

Prepared by: Yvette Kinsella - Special Projects Manager

Meeting Date: Thursday 26 January 2023

Legal: Yes	Financial: Yes	Significance: **High**

Report to COUNCIL/TE KAUNIHERA for decision

PURPOSE - TE TAKE

The purpose of this report is to outline the key provisions of the Water Services Legislation Bill and propose some key points for a Gisborne District Council (Council) submission to Government.

SUMMARY - HE WHAKARĀPOPOTOTANGA

As the next step in Government's three waters reform programme, the Water Services Legislation Bill had its first reading in the House on 14 December 2022. The Bill provides further structure around the powers, functions, obligations and arrangements for Water Services Entities (WSEs) that will deliver drinking water, wastewater and stormwater services across Aotearoa / New Zealand from 1 July 2024.

The key matters covered in the Bill are:

- detailed functions and powers of WSEs to enable them to deliver water services
- charging for water services and pricing principles
- protecting vulnerable consumers
- engaging with stakeholders, such as territorial authorities and consumers
- compliance and enforcement regime
- transfer of assets and liabilities from councils to WSEs.

The local government sector is still assessing the implications of the Bill for councils and communities. Staff will continue to engage in conversations across the sector to identify further matters that should be included in a Council submission. This report discusses those critical matters identified to date that will impact on communities in Te Tairāwhiti and Council's ability to deliver its services:

- the purpose and establishment of subsidiaries by a WSE
- the role of councils in land use planning and placemaking and how they will intersect with the WSE functions and activities
- functions that may be shared between councils and WSEs, particularly stormwater
- asset and liability transfer mechanisms
- relationship agreements.

Public submissions on the Bill close on 12 February 2023. Submissions from local government close on 17 February 2023.

The Water Services Legislation Bill is the third of four pieces of legislation that are part of Government's three waters reform programme. This report should be read alongside **Report 23-14** and **Report 23-16** also on this agenda.

There will be a workshop with Council on three waters reforms on 15 February 2023.

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 - NGĀ TŪTOHUNGA

That the Council/Te Kaunihera:

1. **Instructs the Chief Executive to prepare a submission to the Finance and Expenditure Select Committee on the Water Services Legislation Bill, outlining the points raised in this report, by 17 February 2023.**
2. **Directs the Chief Executive to include any other matters in the submission that may impact negatively on Te Tairāwhiti and/or the Gisborne District Council's ability to deliver its functions.**
3. **Resolves that the Mayor (and/or her delegate) will present in-person to the Finance and Expenditure Select Committee on the points raised in the Gisborne District Council submission.**

Authorised by:

Nedine Thatcher Swann - Chief Executive

Keywords: Water Services Legislation Bill, water services entities, three waters reforms, three waters, drinking water, wastewater, stormwater, submission,

BACKGROUND - HE WHAKAMĀRAMA

1. Refer to **Report 23-14** on this agenda for background information.

2. Government's three waters reforms programme (the reforms) involves enactment of four pieces of legislation:
   - Water Services Act 2020 – to establish an independent drinking water regulator (Taumata Arowai operational from March 2021.
   - Water Services Entities Act 2022 – to establish four water services entities to deliver drinking water services across Aotearoa / New Zealand (passed on 7 December 2022).
   - Water Services Legislation Bill – to provide further structure around the powers, functions, obligations and arrangements for water services entities (introduced on 8 December 2022).
   - Water Services Economic Efficiency and Consumer Protection Bill – to regulate water services price and quality and protect consumer interests (introduced 8 December 2022).

3. This report refers to the third piece of legislation highlighted in yellow.

WATER SERVICES LEGISLATION BILL

4. On 14 December 2022, the Water Services Legislation Bill (the Bill) had its first reading in the House. The Bill proposes amending a number of pieces of legislation (including the Local Government Act (LGA), Resource Management Act (RMA), Local Government Rating Act) to further implement the reforms.

5. The Bill provides for the functions, powers, and duties of water services entities (WSEs) in more detail. The Bill is more operationally focused to ensure that the WSEs are able to successfully provide water services when they become operational on 1 July 2024.

6. The Finance and Expenditure Select Committee has called for submissions from interested parties. Public submissions are due by 12 February 2023. Local government submissions are due by 17 February 2023 to take into account the Christmas closure period.

7. The Bill is 218 pages of 275 amendments to 29 pieces of existing legislation. The local government sector is still assessing the implications of the Bill for councils and communities. Matters other than those in this report will become clearer over the next few weeks. Staff will continue to engage in conversations across the sector to identify further matters that should be included in a Council submission. The rest of this report is focused on what we currently know.

8. Attached are the draft submission outlines from LGNZ and Taituara with some initial thoughts on the matters.

Bill Content

9. The Bill covers the following key matters:
    - Detailed functions and powers enabling the WSEs to own water services infrastructure and to deliver drinking water, wastewater, and stormwater services in place of local authorities including powers to establish subsidiaries.
    - Provisions enabling the WSEs to charge for their services in line with new legislative pricing principles and provisions to protect vulnerable consumers.
    - Provisions giving WSEs regulatory powers to (develop and) administer regulatory requirements that a water services entity is responsible for.
    - Obligations on the WSEs to engage with stakeholders, such as mana whenua, territorial authorities and consumers.
    - A compliance and enforcement regime in relation to the water supply, wastewater, and stormwater networks.
    - Additional detail around the transfer of assets and liabilities from councils to WSEs.
10. In summary, the Bill intends to modernise and transfer the functions and powers of councils for three waters service provision to WSEs.
11. The section that follows provides details on critical matters. Each matter is summarised and followed by an assessment of implications and potential submission points.

CRITICAL MATTERS

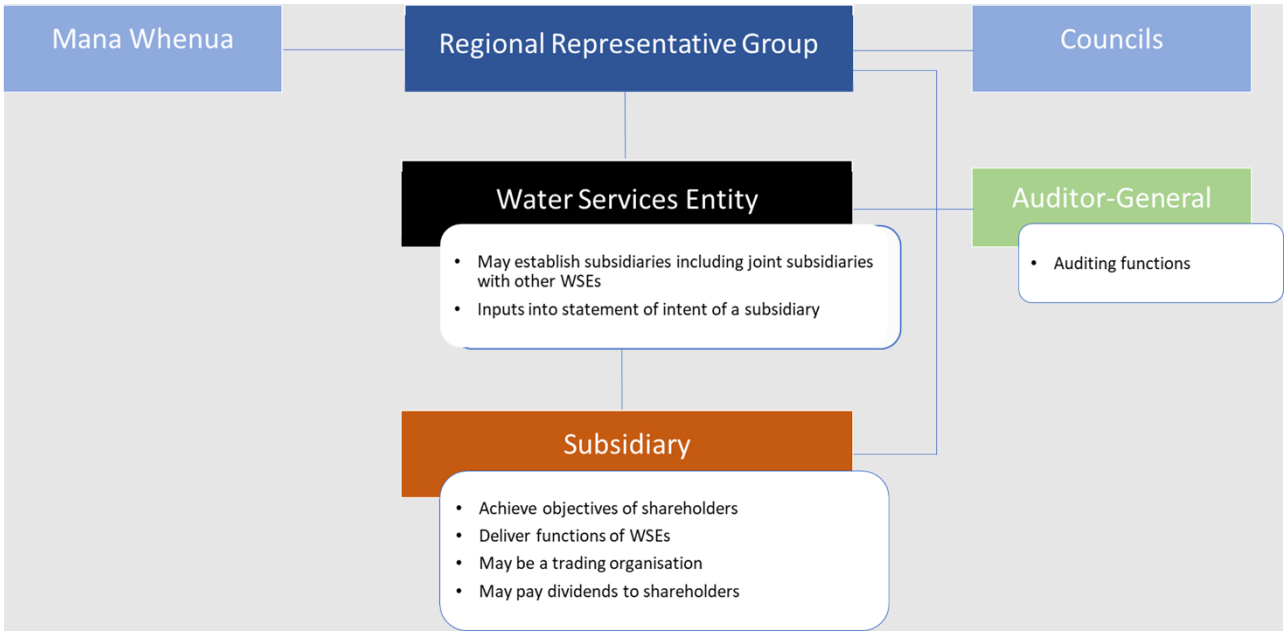
12. The changes proposed by the reforms remove council's statutory powers over three waters delivery and, arguably, dilute and complicate council's ability to deliver on its placemaking functions in relation to the role that three waters infrastructure plays in this. The shifts imposed by the reform legislation will require councils to have the capability to influence the decisions of others without having a clearly specified mandate.

Subsidiaries

Summary

13. A WSE may choose to establish a subsidiary to deliver some or all of the functions of a WSE. A subsidiary would be required to:
    - achieve the objectives of its shareholders;
    - deliver water services in an efficient and financially sustainable way; and,
    - if a trading organisation, follow sound business practice.
14. Subsidiaries may operate as companies with a profit-driven objective similar to other utility providers for telecommunications and electricity. They can be established as trading organisations and can pay dividends to their shareholders. Despite this, a subsidiary is a public entity and subject to auditing by the Auditor General.

15. A subsidiary would have a director reporting to its own board which, in turn, would be accountable to a WSE board. It would operate in accordance with its constitution and an annual statement of intent. A subsidiary must have regard to feedback from its shareholders on the content of its statement of intent.

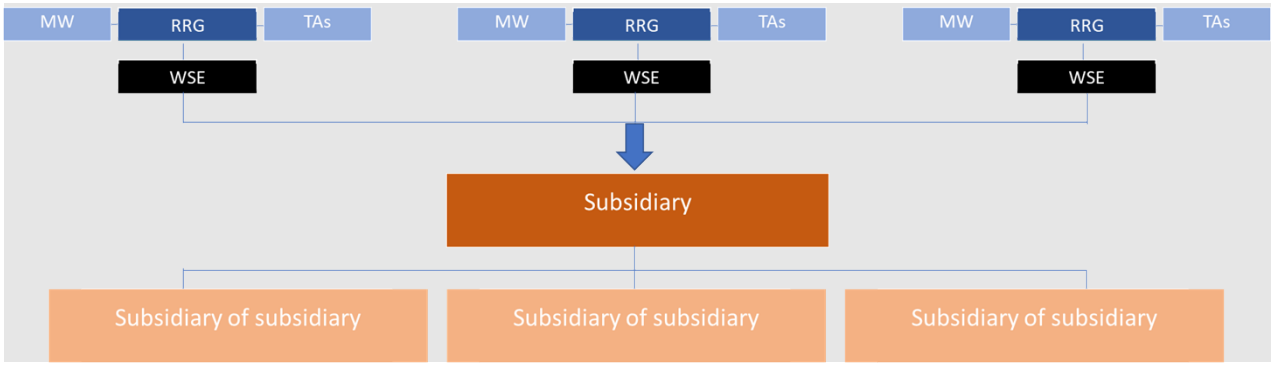


16. Shareholders of a subsidiary could also issue a statement of expectations outlining how a subsidiary is to engage with stakeholders including iwi/hapu and communities. This includes fulfilling any of the shareholders' statutory obligations or agreements with third parties around engagement.

17. The board of a subsidiary is required to report regularly on its operations (as outlined in its statement of intent) to its shareholders – either quarterly or six-monthly as determined by the shareholders. Reports are to be public.

18. The board of a subsidiary must also prepare an annual report to its shareholders that enables a comparison of performance with the statement of intent (explaining any variances).

19. A WSE can establish joint subsidiaries with other WSEs to carry out some or all of its functions. A subsidiary can also establish further subsidiaries. The diagram below illustrates.



Implications and potential submission points

20. Under normal business practice, there are a number of reasons why a company may establish a subsidiary, including:
    - to mitigate risks of a new venture impacting on the parent company
    - to conduct business overseas and/or for tax purposes
    - to generate capital
    - to acquire a parent company's equity or assets and to enable transfer of assets while leaving title to these assets undisturbed
    - to engage in a joint venture.
21. However, a WSE is not a company under the Water Services Entities Act 2022.
22. It is not entirely clear why the Bill provides for the establishment of subsidiaries. It may be that the provisions allow for existing water services companies (Metrowater in Auckland and Wellington Water) to come under a WSE with less disruption. It may be that there is an intention to provide for public-private partnerships for aspects of water services delivery – this could be particularly around major capital projects. It may be that the Bill aims to provide WSEs with opportunities to achieve economies of scale for water services delivery through joint subsidiaries for some activities.
23. Whatever the reason, these clauses are a significant addition to the Bill.
24. There are three things to consider:
    - there is a very thin line of accountability from subsidiaries back to local communities
    - there is a clear shift to corporatisation of water services which, if not adequately regulated, could see significant impacts on more financially vulnerable communities and households
    - delivery of water services could be further centralised at the operational level.
25. At first glance subsidiaries appear to have similar features to a Council Controlled Organisation. Where they differ is that they would not be accountable to councils or RRGs (representatives of territorial authority owners and mana whenua). Instead, a subsidiary is accountable to its shareholders. (It may be that the WSE(s) establishing a subsidiary would nominate the WSE as shareholder(s).) This means they are another step removed from the influence of elected representatives and local communities.
26. LGNZ states that the provisions for subsidiaries "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".

27. There will be pressure on WSEs to deliver to the Government's promise of widescale improvement in water services. This will require significant injections of capital to fund the infrastructure required. A critical concern is around the potential for subsidiaries to have solely profit-driven objectives and the impact that this may have on affordability for households and businesses, particularly in vulnerable communities. We are already seeing a growing concern about energy poverty in Aotearoa / New Zealand and the model proposed for water services has similarities to that of the electricity sector.

28. The Water Services Economic Regulations and Consumer Protection Bill (**Report 23-16**) covers this in more detail. It will be important for that Bill to have appropriate mechanisms for ensuring prices are financially sustainable for all communities.

29. The provisions allow for multiple WSEs to form a joint subsidiary to undertake specific functions. This could become a form of further operational centralisation. This may result in some efficiencies/cost-savings for WSEs around the delivery of some of its functions. It would also mean the capital projects and renewal activities for smaller communities would be prioritised against many much larger and more populous communities. Te Tairāwhiti has not fared well in the past when a population-based model of planning and prioritisation has been used, for example, funding land transport activities.

30. The concerns around the subsidiary provisions could be mitigated by requiring that the establishment of subsidiaries qualify automatically as a major transaction so that a special resolution of the RRG to consider the rationale, purpose, and any risks and mitigations involved in devolving functions further.

Pricing and Charging

31. The Bill outlines pricing and charging arrangements for WSEs to charge for water services.

General charges

32. A landowner or long-term lessee of land in a WSE area is liable to pay charges for water services. For Māori land owned by more than two people, the lessee is liable for the water charges.

33. The Board of a WSE is responsible for setting charges for water services in its area.

34. When setting charges, the board of a WSE must consider a set of charging principles:
    - charges should reflect the costs of service provision
    - charges should promote efficient use of resources (eg. not wasting water)
    - different groups of consumers may be charged different amounts if they receive different levels of service or the costs of providing the services to them is different
    - charges should be simple, transparent and easy for consumers to understand
    - charges should be consistent with the methodologies and determinations that the Commerce Commission makes (in its regulatory and consumer protection role).

35. Charges for water services may be:
    - averaged across a geographic area
    - averaged across a geographic area but with different scales for different service types and different types of consumers
    - for volumetric use of water services, including water estimates.
36. A WSE board can choose not to use geographic averaging if a community receives a higher or lower level of service than what is provided across the wider service area. They can also set lower charges for particular consumers to remedy inequities in the provision of services.
37. Properties that are not connected to water supply or wastewater networks but are within 100 metres of the network and could be connected may also be liable for charges for water services. Māori land is excluded.
38. There are specific provisions around charging for stormwater services. A WSE must calculate the costs for stormwater service provision in accordance with a method determined by the Commerce Commission. The portion of costs that the WSE can recover from a property owner will be based on capital value. Māori land that does not receive water supply or wastewater services is excluded.
39. The Commerce Commission would have powers to prepare a service quality code that outlines any penalties to be incurred.
40. WSEs are not liable to pay rates to council for any pipes or assets that are on property it does not own.
41. A WSE can authorise councils in its service area to collect charges on behalf of a WSE under a charges collection agreement outlining the compensation to councils for the services. An agreement would have a maximum life of five years to 30 June 2029.

Contribution charges

42. A WSE board would be able to set water infrastructure contribution charges for developments if new or more sizeable infrastructure might be required to service the development and the WSE would incur additional capital expense. A WSE can also set contribution charges for capital expenses related to growth that it has already incurred.
43. There are a set of principles for setting contribution charges in the Bill including:
    - charges should be required only if the effects of developments create the need for new assets or increased capacity of existing assets
    - charging levels should avoid over-recovery of costs
    - allocation of costs should consider who benefits from the infrastructure and who is driving the need for it
    - charges should only be used for the benefit of the area the charges are being sought for.

44. A WSE Board must have a contribution charges policy outlining total costs of expected capital expenditure, how much will be funded by contribution charges, any contribution charges that would apply to new developments (including discounts) and transparency around its methodology and approach. The WSE Board must consult with territorial authorities and mana whenua on its contributions charging policy.

45. The Crown is exempt from paying contribution charges.

Transitional provisions

46. The transitional provisions contemplate a WSE carrying forward existing tariff or charging structures until (as late as) 30 June 2027.

Implications and potential submission points

Geographic averaging and volumetric charging

47. The way that general water services are charged for is a sensitive issue.

48. Geographic averaging can be used to protect vulnerable consumers by helping to smooth prices and share costs across all households in a geographic area. Averaging charges protects vulnerable households, who often have higher numbers of people living in them, from paying unaffordable costs for water rates.

49. There is another argument that urban households (which generally have lower per unit delivery costs) should not share in the higher costs associated with delivering a similar level of service to rural and provincial households. Proponents of this would argue that volumetric charging (based on the amount of water used) would be a more equitable approach.

50. A WSE board will set the charging regime and it is likely that they would use a combination of both types of charging mechanisms. The Minister has powers to set maximum limits for the proportion of charges that can be volumetric through a Government Policy Statement. There are questions around what level of input communities would have into a GPS.

51. There are inadequate provisions in the Bill to ensure affordability for all members of a community. The legislation is only concerned with the financial sustainability of the WSEs. This is troubling. There may be some general statements that an RRG would be able to include in its Statement of Strategic Performance Expectations around affordability.

52. While there is a requirement to continue to supply basic water services to households, there is a need for more clarity around the powers of the WSEs to restrict water services as a compliance measure for unpaid debt.

Stormwater

53. There is a concern that some communities may pay twice for stormwater services. They may be required to pay the WSE (for stormwater services) as well as the council (for land drainage). It will depend on determinations of the Commerce Commission around charging for services. There should be some provisions in the Bill ensuring that households are not paying twice across two or more agencies for the same or similar services.

Contribution charges

54. The contribution charging regime in the Bill appears similar to the regime for development contributions under the Local Government Act. One exception is that WSEs can charge for work that it has already undertaken to provide for growth.

55. Under the Bill, the Crown is exempt from paying contribution charges. However, Crown agencies are often responsible for significant developments. For instance, Kainga Ora is estimating building nearly 200 homes over the next 3 years (the majority in Gisborne city) and more are likely to follow. This will have a considerable impact on the capacity of the existing water services networks. If Government does not pay its share of the cost of upgrading water infrastructure, then the costs would fall on current and future water services users.

56. While there may be wider benefits to the community of Government projects there needs to be a transparent process for **all** developments to be assessed in terms of if the benefits are sufficient to justify no payment or a discount.

Council Planning Functions

57. The Bill is frustratingly mute on the intersection between the strategic planning and place-making functions of councils and the water infrastructure planning functions of WSEs.

Implications and potential submission points

58. Instead of clarifying who has responsibility for different functions and to what degree, the Bill adds a range of new powers that, in some cases, appear to overlap with the functions of council.

59. An example is powers to establish a drinking water catchment which has the following features:
    - A WSE board would be a requiring authority under the RMA and be able to designate an area as a drinking water catchment (with the agreement of the land owner)
    - They would then be able to prepare a drinking water catchment plan to manage, monitor and eliminate any risks or hazards to a source of a drinking water supply
    - A plan could also prohibit or restrict access to the area and activities that might use the water or contaminate it.
    - The WSE board would have to consult with councils (TAs and RCs) in preparation of the plan.
    - Under the proposed compliance and enforcement regime, there would be some significant infringements for breaches of these drinking water catchment plans.

60. It is not clear from the Bill how these provisions intersect with Council's regional planning rules and the National Environmental Standards for Protecting Sources of Human Drinking Water. In the case of conflict, which provisions would prevail?

61. As per the LGNZ submission outline "The council-WSE relationship will be a critical one for both parties. It needs to be set up in a way that will enable (rather than compromise) the ongoing role and functions of councils. The legislation needs to reflect that WSEs will operate within a broader system that services communities, with councils remaining central to that overall picture ... communities should expect both service organisations to work hand in glove for their benefit". While the Bill signals the need and opportunity for operational/planning integration and partnering, it does little to actually direct or mandate it or provide a clear framework for it to happen.

62. Councils have to follow statutory objectives to promote local democracy and the social, economic, environmental and cultural wellbeing of communities both now and in the future. In contrast, a WSE must pursue statutory objectives focused on efficiency, financial sustainability, and best commercial practice. Without some firm mandate in the legislation there is a strong possibility for misalignment between the parties which could create tension and favour the 'plan implementer' (WSEs) over the 'plan maker' (councils).

63. Council should consider supporting the proposed amendments in the LGNZ submission outline that:
    - Councils should have mechanisms to instruct WSEs on key areas that remain its core functions (ie. place-making, growth planning, and 'master planning'). This would mean a council can set critical parameters that a WSE must respond to, consistent with its duties and objectives.
    - Subject to a suitable threshold, councils should have powers to seek reconsideration of WSE decisions that will negatively impact the delivery of significant council functions and activities as provided for in a Long Term Plan.

64. The reforms and transition arrangements posed represent some significant risks to the successful completion of the 2024–2034 Long Term Plan process. Staff will provide Council with further information about this as soon as practicable.

Stormwater

65. The Bill proposes that responsibilities for stormwater services are split across different organisations:
    - Stormwater services on roads and transport corridors would remain with the relevant road controlling authority
    - Services in the urban area outside of transport corridors would move to the WSE
    - Land drainage services would remain with territorial authorities.

66. WSEs will be required to produce 'stormwater management plans' to guide the management and future planning of stormwater systems under their control. When producing these plans, the WSE must engage with councils. Councils must work with the WSE to develop a plan.

67. WSEs will also be able to make stormwater network rules. A council must agree that network rules created by the WSE (for its stormwater system) will also apply to council systems.

68. Taumata Arowai will be responsible for setting environmental performance standards for stormwater networks.

Implications and potential submission points

69. There is a strong case to be made for a phased transition of stormwater services to WSEs that extends beyond the transition period ending 30 June 2024 (refer to LGNZ submission outline). Council may want to consider emphasising this point in a submission.

70. If that is not agreed to by Government, it is important that we suggest amendment/s that will mitigate any concerns that Council has.

71. Staff are working through the implications of how these two new powers given to WSEs might impact on Council, including any risks to its ability to deliver its residual stormwater functions.

Enforcement and Compliance

72. There is a comprehensive compliance, monitoring and enforcement regime proposed in the Bill.

73. Each WSE would appoint a Director of Compliance and Enforcement and the WSE boards would prepare compliance and enforcement strategies. Compliance officers would have the authority to monitor, investigate compliance, and take appropriate steps to enforce where breaches occur. They would have the powers of entry, search, and seizure. This is consistent with other powers of councils.

74. The Bill proposes an infringement regime that allows WSEs to issue fines for minor offences. The table below illustrates some of the infringements proposed:

Infringement	**Penalty**
Knowingly or recklessly disposing of materials or substances into wastewater network	Individual < 2 years prison and/or < $75k fine Organisation < $1.5m fine
Connecting to water supply network or supplying water to another person without authorisation	Individual < $50k fine Organisation < $500k fine
Discharging trade waste without trade waste permit	Individual < $500k fine Organisation < $3m fine
Carrying out work near water supply, wastewater or stormwater network without notification	Individual < $100k fine Organisation < $500k fine
Breach of controlled drinking water catchment management plan	Individual < $20k fine Organisation < $100k fine
Failure to comply with water use restriction or limit	Individual < $20k fine Organisation < $100k fine
Wasting drinking water in a way that causes risks to a water supply	Individual < $20k fine Organisation < $100k fine

75. The infringement regime does not accept ignorance as an excuse for breaches.

Implications

76. The proposed compliance and enforcement regime is comprehensive and clearer than the one that councils currently operate under. The WSE can issue infringements for minor offences (akin to issuing a parking ticket), a power council do not currently have. There are much higher penalties for offences – in general a stronger incentive for compliance.

Other matters

77. The provisions in the Bill around the **transfer of assets and liabilities** to WSEs are complex and the outcome could have significant impacts on Council. Staff are seeking external advice on these provisions and will come back to Council with further advice as soon as practicable.

78. In the meantime, we suggest Council consider echoing the concerns in LGNZ's draft submission outline around the process for determining councils' **three waters debt** and the lack of recourse to the Minister in the case of any disagreement over the terms of transfer, particularly the amount. The Heads of Agreement between the Crown and LGNZ has a key principle to ensure councils are 'no worse off' as a result of the transition. The current proposed approach to debt validation and transfer would see some councils (including GDC) retaining some debt from three waters.

ASSESSMENT of SIGNIFICANCE - AROTAKENGA o NGĀ HIRANGA

Consideration of consistency with and impact on the Regional Land Transport Plan and its implementation
Overall Process: High Significance
This Report: High Significance

Impacts on Council's delivery of its Financial Strategy and Long Term Plan
Overall Process: High Significance
This Report: High 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

79. This report is part of a process to arrive at a decision that will/may be of **High** level in accordance with the Council's Significance and Engagement Policy.

80. The three waters reforms represent a transformational change in the delivery of water services. The Bill requires the disaggregation of three waters activities, agreements and financials from Council. The impacts could be significant particularly around:
    - misalignment of water services infrastructure planning with regional strategic planning potentially impacting on housing development and growth
    - negative impacts on communities in terms of levels of service and affordability for households and businesses of water services and the administrative costs of the new WSE
    - loss of economies of scope for Council in delivering remaining (non-three waters) services and how the disaggregation of water services will impact on Council's efficiency and financial management.

TANGATA WHENUA/MĀORI ENGAGEMENT - TŪTAKITANGA TANGATA WHENUA

81. The three waters reform programme is being led by the Department of Internal Affairs (DIA) on behalf of government. Tangata whenua are engaging directly with government on the policy aspects of the reforms through iwi channels.

COMMUNITY ENGAGEMENT - TŪTAKITANGA HAPORI

82. The three waters reform programme is being led by the DIA on behalf of government. To date, the level of community engagement has been very low and only through the Three Waters website.

83. The DIA is about to employ establishment Chief Executives for the four WSEs and a priority for them will be to start conversations directly with communities, including to explain the reforms and the transition process.

84. When Council has a clearer picture of the impacts of the reforms for Te Tairāwhiti and delivery of remaining Council services, we will be able to share this with the community through our own engagement process. We have been waiting for the second tranche of bills to provide a complete picture of the proposed new system as a basis for our assessment of impacts.

NEXT STEPS - NGĀ MAHI E WHAI AKE

Date	Action/Milestone	Comments
14 February 2023	Public submissions due	
15 February 2023	Workshop with Council on three waters reforms	
17 February 2023	Submissions due to Select Committee	
Mar-Apr 2023	Potential to present in person to Select Committee	
25 May 2023	Select Committee report due	
June 2023	Bill enactment expected	

ATTACHMENTS - NGĀ TĀPIRITANGA

1. Attachment 1 - Taituara Water Services Legislation draft Submission 19 January 2023 [**23-15.1** - 23 pages]
2. Attachment 2 - LGNZ Outline of Submission on WSL Bill and Economic Regulation Bill [**23-15.2** - 29 pages]

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

What is Taituarā?

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

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

Our vision is:

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

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

We offer the perspectives of a critical adviser.

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

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

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

Relations with Other Infrastructure Providers

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

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

Recommendations

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

Government Policy Statement: Water Services

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

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

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

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

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

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

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

We renew our recommendation that the Minister should be required to publicly state what support the Government intends to provide those agencies that are required to give effect to the GPS: Water to implement it. That would include funding but would not be limited to funding support alone. For example, the Government might support the development of the water workforce by loosening immigration

restrictions; amend other government policy statements to address areas of conflict and so on.

Recommendation

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

A regulatory case

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

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

Recommendation

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

Controlled Drinking Water Catchments

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

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

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

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

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

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

Recommendations

x. That the Select Committee amend clause 231(1) to require the establishment of a controlled drinking water catchment area by public notice.

x. That the Select Committee amend clause 233 by requiring any compliance notice be provided in writing.

[1] Section 13, Interpretation Act 2019

The term 'long-term control' needs definition.

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

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

Recommendation

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

Stormwater

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

The purpose of stormwater management plans is unclear.

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

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

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

Recommendation

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

Responsibilities in developing stormwater network management plans are unclear.

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

Clause 257(2) places local authorities and transport corridor managers under an obligation to work with the WSE to develop the plan. It is not clear what 'working with' the WSE involves, for example is this simply a provision that is intended to require the sharing of information (such as the location of stormwater catchments,

treatment methods). To what extent is it envisaged that 'working with' the WSEs also comes with some participation in the decision-making process. The Bill should either clarify what the obligation is expected to 'work with' the WSE involves.

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

Recommendations

That the Select Committee:

x. clarify what the obligation to work with the WSEs on development of the stormwater network management plans

x. that the obligations of clause 257 be extended to all public stormwater network operators.

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

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

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

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

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

Recommendations

That the Select Committee amend clause 254 by

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

Service Agreements

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

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

One of the important aspects of the policy proposals that in *Policy proposals for three waters service delivery legislative settings* was that:
"These agreements would be 'deemed' or 'implied' in the sense that individual customers would not need to agree to them, though it would be possible for the default agreements to be replaced by bespoke agreements or contracts (if both parties agree". [2]

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

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

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

The Bill as it stands has not given effect to the intended deemed nature of the agreements. The general requirements are that an agreement must be in place, certain requirements around content, processes for consultation and for publication

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

of the final agreement. There's no reference to the deemed nature of the agreements.

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

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

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

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

Recommendations

That the Committee:

x. amend clause 279 to clarify that service agreements are deemed or implied and do not require the signature of both parties

x. amend the Bill by adding further requirements for communication during engagement on the first/transitional service agreements with those who will be liable to pay WSE charges

x amend the Bill to by adding a requirement to notify in writing those who will become liable to pay WSE charges as to where they can find the first/transitional service agreement

Funding and Pricing

Links with the funding and pricing plan

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

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

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

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

Recommendation

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

The interim funding arrangements impede the objectives of water reform

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

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

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

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

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

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

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

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

The Bill allows for the Chief Executive of the WSE and the relevant local authorities to agree upon a collection agreement. The costs might include postal and 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.

Recommendation

xx. That the Select Committee include a provision in the Bill ensuring that WSE charges are assessed and invoiced on a separate document .

xx. That clause 336(4) be amended to require the Minister to make a determination as to the amount of collection of costs where this is one of the matters referred to the Minister.

A partial rating exemption for the WSEs is unjustified

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

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

This is quite a different treatment from energy and telecommunications providers where the network elements of the assets (such as power lines, 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.

Recommendation

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

The cost of preparing rating information should be shared

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

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

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

Recommendations

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

Should powers to waive debt be completely unfettered?

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

Recommendation

xx. That the Select Committee amend clause 326 by adding the words "subject to any operative policy that the entity has on the waiver of debt."

xx. That waiver policies must be published on an internet site maintained by the local authority.

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

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

We agree.

Recommendation

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

Transfers of Water Services Undertakings

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

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

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

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

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

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

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

Recommendation

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

Has water legislation inadvertently captured non-water services organisations?

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

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

As council-controlled organisations there appears to be a prima facie case that these entities have been captured in the definition of local government organisation. We suspect that the intent that 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 Wellington water) and not those delivering civil construction services.

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

Recommendation

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

Long-term Plans

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

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

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

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

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

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

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

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

Recommendation

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

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

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

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

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

Rather than repeat the discussion in toto, we refer the committee back to the recommendations 55, 56 and 57 that call for wider amendments to the content of

financial and infrastructure strategies, and to the complete removal of powers to 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

Recommendation

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

WATER SERVICES LEGISLATION BILL AND WATER SERVICES ECONOMIC EFFICIENCY AND CONSUMER PROTECTION BILL SUBMISSION // OUTLINE

Background

The Government introduced the Water Services Legislation Bill (WSL Bill) and the Water Services Economic Efficiency and Consumer Protection Bill (Economic Regulation Bill) on 8 December 2022. These two bills build on the Water Services Entities Act, which became law on 14 December 2022. They set out the technical detail of three waters infrastructure and service delivery:

- The WSL Bill sets out the Water Services Entities' functions, powers, obligations, and oversight arrangements.
- The Economic Regulation Bill regulates the price and quality of water infrastructure services and protects consumers.

Both bills had their first reading on 13 December 2022 and were referred to the Finance and Expenditure Committee, which has set a deadline of 17 February 2023 for written submissions from local government (although on 21 December it wrote to councils saying requests for extensions may be considered). LGNZ recognises that this timeframe is very difficult for councils. It coincides with the holiday break and councils preparing to submit on the Resource Management Bills and Future for Local Government Review. We have repeatedly raised our concerns around these timeframes with the Government.[1]

Our key points

Water Services Legislation Bill

- The council-WSE relationship will be critical for both parties. It needs to put communities first and enable (rather than compromise) the ongoing role and functions of councils. While WSEs are expected to 'partner and engage' with councils, what this means in practice must be clarified.

[1] Councils are able now to request an extension to the RM bills submission deadline to 19 February (contact the Environment Select Committee). The deadline for feedback on the Future for Local Government draft report feedback is 28 February.

- We are unhappy with provisions that are different from what the Rural Supplies Working Group envisaged. Our view remains that there should be an opt-out option available to communities that can demonstrate that they satisfy the 'transfer requirements'.
- We are concerned about the provisions relating to councils collecting water charges on behalf of WSEs until 2029. 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.
- There are number of provisions that need clarifying or amending to ensure councils do not attract unfunded mandates under the new system or are not financially disadvantaged.
- We are concerned about the process for determining councils' three waters debts.
- The addition of provisions on subsidiaries based on the CCO provisions of the Local Government Act 2002 is a material change that we do not support.
- We have concerns around who will 'wear the liability' when things go wrong, and what legal remedies will (and should) be available.

Water Services Economic Efficiency and Consumer Protection Bill

- The Bill views the water services sector as similar to existing monopolised utility industries, which we think is the wrong approach. For example, the Bill includes an explicit reference to limiting WSEs' ability to "extract excessive profits". This language is inflammatory, inaccurate and unnecessary given the proposed public ownership model
- We think the information disclosure elements of the Economic Regulation Bill can deliver on most of the regulatory policy outcomes the Government has targeted for improvement, and should be the primary initial focus of the regime.
- Introducing quality regulation in the first regulatory period is an unrealistic target.
- Price-quality regulation should similarly be delayed and made subject to a further recommendation by the Minister. We are concerned about the potential impact price-quality regulation could have on the short/medium term debt capacity of the new water services entities.

The purpose of this outline

This outline has two purposes:

1. To help you prepare your own submissions. The outline flags issues that we think all councils will be concerned with and potentially want to submit on.
2. We really want your feedback to shape our actual submission. Depending on your feedback, our submission could look quite different from the outline we're sharing below.

The outline is structured in two parts – one covering each Bill – followed by a glossary and questions for feedback.

How we'll develop LGNZ submissions on the two Bills

This **outline** sets out where we intend to focus our submissions and the key points we plan to make. Please let us know what you think. There is a list of questions we especially welcome your feedback on at the end of this document.

The deadline for feedback on the outline is **Friday 27 January** – please email your views to submission@lgnz.co.nz

During January, we'll be developing our **draft submission**. Subject to feedback, this will largely replicate and build on the submission outline, and add suggestions about how to improve the drafting of legislative clauses.

We are planning to share that draft with you on 10 February. We will have a very short window of feedback on that draft, given the Select Committee deadline for council written submissions of Friday 17 February.

Water Services Legislation Bill

Topic	Response
General relationship between councils and WSEs	• The council-WSE relationship will be a critical one for both parties. It needs to be set up in a way that will enable (rather than compromise) the ongoing role and functions of councils. • However, the WSL Bill tends to treat councils as just another stakeholder group for a WSE to engage with, while implying that the WSE acts as an independent self-sufficient organisation. This 'us and them' approach has the potential to be at the expense of a more joined up focus on local communities' needs. • The legislation also needs to reflect that WSEs will operate within a broader system that services communities, with councils remaining central to that overall picture as well as being democratically accountable. Communities should expect both service organisations 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. • However, there is an alternative view that if this reform progresses as proposed, councils will lose control over their assets and lose their three waters knowledge base. This should mean that councils don't retain any responsibility for water service delivery, including issuing invoices. • Existing relationships, experience and capabilities of councils will need to be respected and leveraged if the overall system is to operate well at a local level. And expectations on councils, particularly during the transition

	and establishment phase, need to be carefully managed and take account of the fact that councils will lose their three waters capability and capacity when staff transition to the new WSEs.
Functions of Water Services Entities	• The WSL Bill will give WSEs a number of new 'functions' (in addition to those included in the WSE Act 2022). We support the specific requirement to 'partner and engage' with councils. • However, it's unclear what 'partner and engage' with councils will actually mean in practice, including how it will connect with councils' placemaking and community wellbeing functions. No expectations are set and no guidance is provided (*see also 'relationship agreements' below*). • The obligation to 'partner and engage' should not amount to an expectation that councils will be involved in three waters service delivery if the reform proceeds as proposed and councils lose control of three waters assets.
Absent alignment of 'purpose' between councils and WSEs	• We are concerned that the lack of shared 'purpose' between councils and WSEs will create tension. Under the Local Government Act 2002 (LGA), councils are required to promote the social, economic, environmental and cultural wellbeing of communities both now and in the future. WSEs do not share this purpose. This lack of clear alignment could create tension and favour the 'plan implementer' (WSEs) over the 'plan maker' (councils). • We think the WSL Bill should expressly recognise that councils' ability to influence three waters services is limited to the tools available under the new legislation. Councils should not be accountable or responsible for three waters outcomes or other outcomes that depend on WSE decisions, which may not align (in substance or timing) with a council's broader planning frameworks. • What happens if a council ends up in conflict with a WSE because the council's view of 'community needs' is at odds with what the WSE can justify or afford from a (wider service area) financial sustainability perspective? This needs to be clarified. • What happens if a WSE limits or stops the provision of services to an area because it assesses that climate change or natural hazard risks mean a higher level of investment is uneconomic? This could be the case if the cost of repair exceeds available financial resources when weighed against competing priorities. And what happens if the WSE's actions don't align with a council's broader plans to build resilience to or respond to climate change/natural hazard risks in a certain area? This needs to be clarified. • A WSE must pursue statutory objectives focused on efficiency, financial sustainability, and best commercial practice. There is potential for misalignment between these drivers and councils' broader focus that encompasses placemaking and community wellbeing. But in resolving this tension, councils will potentially be limited to escalating issues to the RRG

	and providing input on relevant planning/policy documents (unless resolution is included in a 'relationship agreement' – see discussion below).
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. Their communities will assume a council still has sway and a voice. This assumption could be expressed at the ballot box, even if an individual council and its councillors (including those on a RRG) have limited control over actual service delivery. • We think the LGA should expressly recognise that a council's ability to achieve some aspects of its 'purpose' will be heavily dependent on WSE decisions – over which it has limited or no control. As such, the duties of a council should expressly reflect those limits. • Given an element of political accountability is inescapable, we think the model should be changed in one or more of the following ways: a. Councils be given a louder voice that WSEs must listen to on key topics (for example, around place-making and 'master planning'). This would mean a council can set some of the operating parameters that a WSE must respond to, consistent with its duties and objectives); b. 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. (As Resource Management Reform beds in, this would extend to an approved regional spatial strategy.)
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'. This would ensure that all councils/WSEs benefit from a best-practice approach to matters they all share in common. It would also help develop consistency and reduce the need to 'learn' and apply bespoke arrangements. • 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. This could mean, for example, an express expectation of joint care and stewardship for all the systems impacted by their respective actions for the benefit of local communities. It could mean finding synergies that leverage and enable each organisation to succeed and avoid duplication of resource and cost. There should be an express statutory basis and mandate for this – which could be analogous to the need for a

	WSE to address Te Mana o te Wai and respond to statements by mana whenua. • 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. • There are suggestions throughout the Bill that the scope for engagement is limited to the operation of stormwater, land drainage, or related services (cl 468(1)(c)(iii)). This is too narrow. There are multiple touchpoints for the WSE/council relationship, all of which need to be identified and managed. This would also provide an opportunity for process synergies. For example, consulting communities once on the full range of things each cares about, to lower cost, create efficiency and further develop expertise. • Relationship agreements with regional councils should be more limited given that they will continue to play a regulatory role. • We think some of the planning interface arrangements used in the Scottish Water model could be adopted in water services legislation, for example: a. WSEs should contribute to the writing of 'main issues reports' (which are front-runners to local development plans); b. WSEs should contribute to the writing of any proposed local development plans; c. WSEs should contribute to the writing of an 'action programme', which supports delivery of local development plans; and d. WSEs should comment on all outlines or full planning applications referred to by local authorities.
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 Māori 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. Otherwise some local priorities may need to be sacrificed to deliver on central government priorities.
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 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.

	• The process required to subsequently transfer the service to an alternative operator is too high a bar. Our view remains that there should be an opt-out option available to communities that can demonstrate that they satisfy the 'transfer requirements'.
Charging provisions – collecting charges	**Councils 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 collects 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 if a charging agreement is not agreed upon, the Minister has power to impose terms. • While our preference is that councils aren't responsible for collecting charges, if it is not practical for WSEs to stand up their own billing/collection systems on 1 July 2024, then in our view any interim arrangement should be supported by agreed principles and limits to protect councils' interests. The WSE will need to carry the risk of council resources and systems not being able to do what the WSE might want. • The provisions in the WSL Bill are based on those in the Infrastructure Funding and Financing Act 2020 (IFF) for collecting IFF levies. However, these circumstances are very different. There are range of other matters that need to be recognised: a. The WSL Bill contains a diverse range of charges. Are councils expected to invoice and collect them all, as and when requested by the WSE? Requiring councils to collect a diverse range of charges would have implications for existing processes/IT systems. This would create additional costs for councils. The full cost of any enhancements will need to covered by the WSE. b. Alternatively, it should be very clear that each council will only do what its current systems are capable of doing, which may fall short of what the WSEs want. Three waters billing will not be councils' core business nor a priority in term of the performance of their continuing functions. c. If a WSE utilises the IFF itself, would it be appropriate for councils to collect those levies (given that the council is not the proposer of the project which the levy will support)? d. Councils will need to be fully insulated from any risk associated with this function and not liable for failures if they exercise reasonable endeavours. e. Councils will be entitled to favour their own requirements. Unless separate payments are made (for example, payers are asked to pay the

amount invoiced on behalf of the WSE direct to a WSE bank account), then receipts and prepayments received into a council account should first be applied to council rates (i.e. the WSE will wear the risk of any shortfall).

f. The Bill should specifically address (and insulate councils from) compliance risk associated with Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and responsibility for accounting for GST.

Geographic averaging:

- According to the Bill, 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 determinations (which will not be in place on 1 July 2024).
- The transitional provisions contemplate a WSE carrying forward existing tariff or charging structures until (as late as) 30 June 2027.
- A core pricing principle (which, if not brought forward by regulations, will apply from 1 July 2027) is that charges should 'reflect the costs of service provision'. Given the way the principle has been expressed, and then qualified, it suggests a starting point of standardised user pricing by reference to the WSE's total cost base. The Bill says that charging a group of consumers differently may only occur if the group receives a different level (or type) of service, or the cost of providing the service to that group is different. But even then, a WSE board may decide not to apply a 'costs should lie where they fall' approach (including in order to remedy prior inequities in the provision of services), or the WSE CE may discount charges that would otherwise apply.
- Geographic price averaging of residential water supply/wastewater services is a sensitive issue – as is addressing historic service inequities. This has been recognised by their inclusion as additional topics that can be addressed in the GPS.
- Councils have expressed concern that geographic averaging of water services charges may create new inequities. For example, should residential consumers in a metropolitan area (who benefit from the cost efficiencies that come from operating at scale in a defined location) share in the (naturally) higher costs involved in delivering a similar level of service to a rural and provincial residential consumers? This issue becomes

	even more complex where there are strongly held views about the level and quality of previous investment in the water services assets. Conversely, using metro areas' scale to subsidise costs for smaller, rural areas was understood by a number of councils to be an underlying principle of Three Waters Reform. 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. If standardised pricing (for the same level of service) isn't enshrined in legislation, some councils will feel misled by the dashboards provided by the Government, which gave every council within a proposed entity the same cost per household for three waters post-reform. • Individual councils will need to assess how this might apply to them and their communities, after a WSE has indicated how it might be applied in practice. An RRG should have to endorse or mandate this policy before it can be implemented (especially if the funding and pricing policy that allows it only provides high-level guidance). • Supporting cabinet papers released by the Minister indicate that moving to harmonised prices will inevitably take several years, to smooth the impact of changes on individual customers and avoid price shocks. **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. 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.
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. Although this outcome may be forced in the short term, there will be a point of material adjustment down the track, for the reasons discussed below. • 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.

	• It is unclear whether DIA has a plan to address situations where council rates do not drop by an amount equal to what the WSE is charging for water services. This needs to be addressed.
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 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. • A council must agree that network rules created by the WSE (for its stormwater system) will also apply to council systems. Taumata Arowai will be responsible for setting environmental performance standards for stormwater networks. **Management plans:** • 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. • The operational interface and touchpoints will be many and varied. These need to be carefully managed as each council and its WSE find their feet and set up channels of communication and processes to support their ongoing engagement and legal compliance obligations. **Charges:** • 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 (cl 63 of Schedule 1 – new Part 2 of Schedule 1 of WSE Act 2022). But how will councils pay any stormwater services charges if they are not allowed to rate or charge for water services?
Interface with councils' roles and functions	**Carrying out works:** • WSEs will have the power to construct or place water infrastructure on or under land owned by councils. The WSE only needs to provide 15 days' notice where it intends to carry out work. We question how this will work cohesively with council processes, and whether the 15-day notice period is sufficient warning for councils. **Sharing rating information:** • The Act will require local authorities to share rating information kept and maintained under the Local Government (Rating) Act 2002. • Not only do councils need to be compensated for the work required to share this information: a. they need to be insulated from any risk associated with complying with a WSE request (cl 319(2)) that is beyond what the WSE is entitled to ask for; and b. their obligation needs to be subject to what their existing systems are capable of producing (with the resources councils have available, recognising that this will not be their core business nor a priority in terms of the performance of their continuing functions).
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 the Crown and LGNZ (these are referenced in cl26A of sched 1 Part 1, subpart 6 of WSE Act). • The Bill anticipates scenarios where councils may keep holding (some portion of) this debt for a period of up to five years. This may be to accommodate instalment payments over time to match the existing debt repayment profile. But more detail is required from DIA about what is actually contemplated here.
WSE financial reporting	• Should there be an extension/equivalent to the Local Government (Financial Reporting and Prudence) Regulations 2014 for the WSEs?

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.
Application of transfer provisions to CCOs	• A number of issues have arisen with respect to the application of asset/staff transfer provisions to CCOs. These issues are addressed in further detail in **DRAFT** advice from Chapman Tripp (contained in Appendix 1 below). We will expand on this further in our submission.
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. For example: a. What happens if water controlled by a WSE damages council assets? b. 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? c. Will councils or landowners be able to bring judicial review proceedings against WSE decisions on policies/plans that adversely impact the value of their property or other aspects of their economic interests? d. Will councils continue to be liable for past breaches and failures relating to water infrastructure, which they may not now be able to fund?

	• These matters need to be clarified.
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: a. 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 b. 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.
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 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 other's 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 functions.

Water Services Economic Efficiency and Consumer Protection Bill

Topic	Response
Problem definition	• We do not think the Economic Regulation Bill approaches the core 'problem definition' from the right perspective. • The Bill views the water services sector as similar to existing monopolised utility industries. In particular, the Bill aims to limit WSEs' ability to 'extract excessive profits'. We think this language is inflammatory, inaccurate and unnecessary given the proposed public ownership model. • The policy work supporting the Bill suggests the focus of economic regulation should be: a. quality information to support robust asset management; b. efficiency; and c. transparency and accountability for expenditure and investment. • In our view, information disclosure should be the primary focus (at least in the first instance).
Information disclosure	• The information disclosure elements of the Economic Regulation Bill can deliver on most of the regulatory policy outcomes the Government has targeted for improvement. In particular, information disclosure is likely to deliver accountability, transparency and efficiency, and support development of asset management systems and processes. • However, the Government should provide the Commerce Commission with a clear (and focused) direction on the problem definition, which would then inform key elements that need to be covered in information disclosure. This would ensure information disclosure does not end up being overly prescriptive or onerous relative to the Government's objectives. • It appears the Government wants to increase information/transparency around assets held by the WSEs (and their condition), expenditure and revenue/charging. We question whether this is already provided for in the Water Services Entities Act (and the WSL Bill), and whether there is any additional value to be obtained from adding a costly resource- and

	expertise- intensive regulatory reporting and compliance regime into the mix. • The initial 'information disclosure step' (in combination with the other proposed elements of the three waters model) will deliver substantially all of the benefits offered by economic regulation, and solve the most obvious and pressing issues at the centre of the problem definition. • If *just* this information disclosure element was adopted (at least initially), the simplified approach would provide clarity in the early stages of reform. It would be simple to explain and understand, and would: a. Avoid creating a medium/long term source of regulatory risk on day one that is impossible to accurately predict and factor in at a time when key WSE systems (including funding arrangements and long term planning) need to be put in place. b. Ensure councils (and communities) are not required to accept a delivery model with a key element still undecided. By creating clarity at the start of reform, councils would be able to give their communities a clear, simple outline of what to expect. Alternatively, adopting an incomplete regulatory regime will mean New Zealand's communities are committing to potentially negative future outcomes, without an ability to turn back. • Not focusing on information disclosure alone and asking stakeholders to embrace a high trust/high hope approach to a central component of the reform will only heighten existing scepticism around (and potentially opposition to) the proposed reform.
Quality regulation	• Introducing quality regulation in the first regulatory period is an unrealistic target. • Quality regulation applies to other utilities. However, quality regulation requires: a. A clear (and quantified) long-run view of current quality performance across the whole asset base (i.e. a baseline); b. Information on the level of service quality consumers support, and are prepared to pay for; and c. An understanding of what level of quality performance is realistically achievable in the future, on what timeframe and at what cost. • This is particularly important given failure to comply with quality standards exposes both the WSE and individual directors and officers to civil and criminal liability. • Other sectors (e.g. electricity or telecommunications) implemented their quality regulations with an existing historic data set of network performance, which provided a clear baseline and supported a forecast of achievable future performance. Outside of the main metros, we doubt this would be the case for three waters. • The first regulatory period should instead be dedicated to information gathering to support future quality regulation (including engaging with

	communities to understand what they will need from the service). Quality regulation should be introduced, at the earliest, in the second regulatory period, not the first, and utilise information obtained through information disclosure in the first regulatory period. • Information disclosure is likely to achieve most of the aims of economic regulation. Rather than an option to defer (which is the current approach), imposition of quality regulation should be conditional on the Minister making a recommendation on the advice of the Commerce Commission. • The performance requirements that the Commerce Commission may regulate are also unprecedented and unduly intrusive. They would allow the Commission to substitute its own view for the engineering judgement of the WSE. This goes well beyond the incentives-based regulation that has traditionally (and effectively) applied in New Zealand. Not only is the Commission not well placed to carry out this role, but it would compromise the ability of the board to discharge its duties. • The relationship between quality regulation and service quality codes under Part 3 also needs to be clarified.
Price-quality regulation	• Price-quality regulation should similarly be delayed and made subject to a further recommendation by the Minister. • Price-quality regulation is an extremely costly and complex form of regulation. It is not realistic to roll out price-quality regulation just three years into the new regime. It is also likely to represent a disproportionate regulatory burden in light of the gains that can be made with information disclosure alone. • Price-quality regulation aims to address excessive profits and increase efficiency. As we outlined above, excessive profit taking is not an issue in the three waters sector. Efficiency would be addressed through the information disclosure regulation. We think the information disclosure component should be given a chance to do its work, before we move to a more complex, onerous, and costly form of regulation. • Information disclosure has been effective in other sectors. For example, airports are regulated with information disclosure only, and it has been effective in driving efficiency. It doubles as a 'soft' from of price control, because financial returns can be exposed to scrutiny. • Similar to quality regulation, price-quality regulation is more effective with better data. If price-quality regulation becomes necessary down the track, the regulator would be better placed to implement it with two or more regulatory periods of data.
Debt capacity and financial concerns	• We are concerned about the potential impact this regulation could have on the short/medium term debt capacity of the new water services entities. • In particular, we are unsure of the impact this regulation would have on WSEs' ability to meet their share of the 'better off' funding commitment to councils without using the debt needed to meet three waters compliance

	costs (including regulation) and their existing/expected future investment requirements. • If WSEs could *not* fund their mandatory commitments, we think the Crown should fund an interim solution and only look to recover that cost (for example, by transitioning the debt to the WSEs) when the WSEs can handle it without compromising their operations. • We also think WSEs should only make financial support package payments out of 'excess' borrowing capacity, and so long as that debt burden does not result in a materially increased cost to consumers. • If the economic pricing and transitional arrangements create 'abnormal financial circumstances' for the WSEs, we think the Government should provide additional financial support to the entities in order to bridge the gap between: a. The 'known realities' the entities will face during the transition phase; and b. The financial position the modelling *assumes* the entities will be in to operate as intended and start delivering on the benefits intended to accrue from the new model. • This may mean the Government will need to make a short-term compromise on one or more of its policy bottom lines during this initial period of fragility.
Te Mana o te Wai and Te Tiriti obligations	• We would like to get a better sense of how the Commission will account for the WSEs' obligations under Te Tiriti, Te Mana o te Wai, and Treaty settlements. How will these aspects be reconciled with the Commission's well-established economic/input data-based approaches for regulating other utilities? Taumata Arowai is better placed to address these matters. The Commission should have regard to Taumata Arowai's position on these matters.

Glossary

Economic Regulation Bill – Water Services Economic Efficiency and Consumer Protection Bill

IFF – Infrastructure Funding and Financing Act 2020

LGA – Local Government Act 2002

RM – resource management

WSE – Water Services Entity

WSL Bill – Water Services Legislation Bill

Questions for feedback

We welcome your feedback on anything in the above outline or the legislation as introduced. We would particularly appreciate answers to the following questions:

1. Is there anything that we've missed from our submission outline that you'd like to see included?
2. Is there anything we've included that you don't agree with or think we should change?

APPENDIX 1: EXPLANATORY NOTE – COUNCIL CONTROLLED SERVICE COMPANIES

chapman tripp

Memorandum

Date: 21 December 2022

To: Local Government New Zealand

For Your: Information

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THREE WATERS REFORM | COUNCIL CONTROLLED SERVICE COMPANIES

Background

1 The NTU has recently communicated with a number of councils about the application of the asset/staff transfer provisions of the Water Services Entities Act 2022 (**WSEA**) to council controlled organisations (**CCOs**) involved in water service delivery.

2 The WSEA, including as it will be amended by the recently introduced Water Services Legislation Bill (**WSLB**), provides a high level framework for the identification and transfer of CCO water services related assets, liabilities, contracts and staff. The actual impacts will not be a 'one size fits all' thing. The impact will depend on the specific circumstances and operations of the CCO.

3 It will also depend on where the WSE establishment chief executive, DIA/NTU and the Minister (on advice from DIA and other officials) draw the line when applying the principles in the WSEA to determine what is 'in' for transfer purposes and what is 'out'.

4 Where that line is drawn will be determined by:

4.1 the words in the WSEA (as such, there is an opportunity through the select committee submission process for the WSLB to seek changes that accommodate council/CCO concerns); and

4.2 engagement and advocacy with DIA (as policy/system stewards – as well as NTU, which is more focused on standing up the WSEs) to ensure they appreciate:

(a) the potential adverse impacts that could flow from the manner on which the transfer provisions are applied to CCOs; and

(b) that the ongoing financial health and viability of such CCOs is a material consideration and relevant to the overall success of both councils and the 3W reforms.

5 This note:

5.1 sets out how the transfer provisions provided for in the WSEA/WSLB will apply to a wholly-owned CCO infrastructure service company that provides services to the council (and third parties, including other councils) relating to (amongst other things) three waters service delivery (e.g. operations support, asset replacement, repairs and maintenance) – referred to below as a **ServiceCo**;

5.2 highlights potential issues for early discussion with DIA/NTU and to inform council/CCO submissions to the select committee considering the WSLB; and

5.3 suggests the steps that a ServiceCo and/or its council owner could take to identify the relevant issues and impacts for the ServiceCo and engage with DIA/NTU to seek to avoid or mitigate adverse impacts (refer **paragraph 37**).

6 The nature and size of any adverse issues will also depend very much on the approach DIA/NTU proposes to adopt for it comes to a ServiceCo.

7 The preferred outcome would be for DIA/NTU to adopt a 'least harm' approach to the existing ServiceCo model, which is replicated throughout NZ. This part of the current operating model is not broken or a primary focus of the key policy drivers for 3W reform. The existing ServiceCo model is highly integrated and already shaped by commercial drivers, but designed to provide a pricing advantage to councils/ratepayers. This should be maintained (at least in the near term) as it provides material benefits for councils that need to be preserved and can be extended to the WSE. To do otherwise would risk material disruption and give rise to a range of unintended consequences. We understand that, to date, the NTU approach/plan and none of these potential impacts have been explained or surfaced in the general engagement that has occurred to date between the sector (councils/CCOs) and DIA/NTU.

8 A 'least harm' approach would most easily be achieved by:

8.1 in the case of contracts between a council and ServiceCo that are specific to, and exclusively relate to, service support for 3W infrastructure that will transfer to a WSE, substituting the WSE in for the council as the recipient of services under that contract; and

8.2 in the case of global/portfolio contracts (where water services that a WSE will have an interest in are just a part), having the WSE and the council share the benefit of the contract and each be the recipient of services under it – in the case of the WSE just for services that relate to core 3W infrastructure assets the WSE will own.

9 For the purpose of this note, we have assumed that:

9.1 the council owner (not the ServiceCo) owns all local 3W infrastructure assets to be transferred to the relevant water services entity (**WSE**); and

9.2 the ServiceCo provides services (including to its council owner) under contract on arms' length terms and conditions.

PART ONE: HOW THE WATER SERVICES LEGISLATION TRANSFER PROVISIONS APPLY TO A SERVICECO

10 Under the WSEA, **relevant** staff, assets/property, contracts, and liabilities of a 'local government organisation' may be transferred to the WSE. A 'local government organisation' means any council, **CCO** or CCO subsidiary that provides (any) services related to the provision of 3W. This means a ServiceCo providing a *mix* of 3W services and other non-3W related services will be considered a 'local government organisation', and will be subject to the 3W transfer provisions.

Exception for mixed-shareholder CCOs

11 Under the WSEA, a 'mixed-shareholder CCO' is defined as a CCO which has:

11.1 one or more shareholders that are local government organisations; and

11.2 one or more shareholders that are *not* local government organisations.

12 Unlike a CCO wholly-owned by its council, a mixed-shareholder CCO will **not** have its 'assets, liabilities, and other matters'[1] listed on an 'allocation schedule' (and therefore transferred to the WSE). Instead, the WSE will receive all of the *shares* in that mixed-shareholder CCO that are held by the local government organisations. The staff transfer provisions also do **not** apply to a mixed-shareholder CCO.

DIA will prepare an 'establishment water services plan'

13 DIA is required to produce (and publish) an 'establishment water services plan' (see clause 9 of Schedule 1 to the WSEA). This will include:

13.1 the processes, policies, and guidance for identifying the functions, staff and assets, liabilities, and other matters (including contracts) that will be transferred from a 'local government organisation' to the WSE; and

13.2 the proposed timing for the transfer of those functions, staff, and assets, liabilities and other matters to the WSE.

WSE establishment chief executive will prepare an 'allocation schedule'

14 The WSE establishment chief executive must prepare an 'allocation schedule', which specifies the assets, liabilities and other matters (including contracts) it recommends transferring to the WSE that are currently held by 'local government organisations' (see clause 5 of Schedule 1 to the WSEA).

15 When preparing the allocation schedule, the establishment chief executive will set out the assets, liabilities and other matters (including contracts) held by a 'local government organisation' that:

[1] This is a term that is defined in clause 1 of Schedule 1 to the WSEA. It is *very* widely defined and catches everything other than staff which are addressed by a separate transfer mechanism.

15.1 relate *wholly* to the provision of water services; and

15.2 relate *partly* to the provision of water services, and partly to the provision of other services.

16 Like councils, a ServiceCo will be required to co-operate with the relevant WSE and the NTU to facilitate the preparation of the allocation schedule. This includes the provision of information relevant to NTU's planning.

Transferring assets held by a ServiceCo

17 As a general principle, assets/property held by the ServiceCo will be included in the '**should-not-transfer**' section of the allocation schedule if:

17.1 the assets/property has more than one purpose or use; **and**

17.2 the primary purpose or predominant use of the assets/property is **not** the delivery of 3W services.

18 This is a 'guiding principle', which the establishment chief executive must have regard to when preparing the allocation schedule. As such, it is possible that the NTU could seek to add such assets/property to the 'transfer' section.

19 Data held by a ServiceCo (that relates to the provision of 3W services) will be included within the broad definition of 'assets, liabilities and other matters'. As such, that data will be specified in the relevant allocation schedule, and (if it is to be transferred to the WSE) vested in the WSE through the process discussed below.

20 The *proposed new* clause 43(1)(e) of Schedule 1 to the WSEA makes it clear that 'information' held by a ServiceCo that relates wholly to the provision of 3W services will automatically become the information of the WSE.

21 Once the ServiceCo's assets are set out in the allocation schedule, the Governor-General may (by Order in Council) vest those assets in the relevant WSE. The Governor-General will also specify assets that will **not** vest in the WSE (under *proposed new* clause 42 of Schedule 1 to the WSEA).

Transferring debt held by a ServiceCo

22 The WSLB sets out how the relevant WSE will compensate councils for the total debt owed by that council in respect of any 3W *infrastructure*. We have assumed the ServiceCo will *not* hold the relevant 3W infrastructure, and as a result, we have not discussed this debt transfer provision in detail.

23 However, debt held by a ServiceCo *relating* to the provision of 3W services (e.g. debt incurred to enable it to provide 3W services to its owner council) could be transferred to the relevant WSE if it is specified in the relevant allocation schedule.

24 Alternatively, debt outstanding on 1 July 2024 that relates *wholly* to the provision of 3W services will be transferred to the WSE under the 'catch all' provision in clause 43 of Schedule 1 to the WSEA, unless the Governor-General has made an order to

the contrary under clause 42 (i.e. specifically providing that such debt/liability will not transfer to the WSE).

25 However, we note the potential challenge involved in quantifying/allocating a portion of corporate borrowing to a specific activity/assets. This is another matter that will, if relevant, require discussion between the ServiceCo and the NTU.

Transferring contracts held by a ServiceCo

26 Under the WSEA, contracts held by a ServiceCo that relate to the provision of 3W services are included within the definition of 'assets, liabilities and other matters'.

27 The establishment chief executive will specify the contracts held by the ServiceCo that relate wholly or partly to the provision of 3W services, and list these in the allocation schedule for transfer/vesting in the WSE.

28 If a ServiceCo is party to a contract that relates *wholly* to the provision of water services, then the transfer provisions appear to mandate that that contract would vest in the WSE. This makes sense from the council perspective (as recipient of the ServiceCo services – presumably the main scenario the drafters had in mind). It does not fit well where the local government organisation is the service provider which has a range of other business lines.

29 The Minister has significant powers (under *proposed new* clause 52 of Schedule 1 to the WSEA) to give 'directions' to a ServiceCo and a WSE, setting out how a particular contract should be dealt with (regardless of whether it relates wholly or partly to water services). This includes:

29.1 requiring a ServiceCo and a WSE board to negotiate a retention or transfer, or the sharing or splitting (as required) of an existing contract; and/or

29.2 requiring the ServiceCo or the WSE board (or both) to offer any *other third parties* that have rights and obligations under a contract a replacement contract.

30 The WSLB does not *clearly* contemplate (or accommodate) a contract between two 'local government organisations' (i.e. a council and its ServiceCo). In such a scenario, it would make more sense for the ServiceCo to be treated as a 'third party' (even though they are treated as a 'local government organisation' in the rest of the transfer related provisions). Proposed new clause 52 of Schedule 1 to the WSEA should be amended to expressly address this situation. Assuming a ServiceCo is treated as a 'third party' for contracts it has with councils relating to the provision of 3W services (whether its owner council or another council it provides services to), the Minister would be able to:

30.1 require the council and WSE to negotiate the retention or transfer, or sharing or splitting (as the case may be) of that contract; and/or

30.2 require either the council or WSE (or both) to offer the ServiceCo a replacement contract.

The ServiceCo would need to choose (by 1 July 2024) whether to:

30.3 enter into any replacement contract that is offered;

30.4 continue with the existing agreement (in accordance with any requirements set by the Minister); or

30.5 terminate the existing agreement (without compensation).

Transferring staff employed by a ServiceCo

31 To the extent a ServiceCo provides 3W related services and has employees doing that work, it will be classed as an 'existing employer' for the purposes of Schedule 1 to the WSEA.

32 As a result, the chief executive of the department will review the positions of employees employed by the ServiceCo, and will determine whether those positions 'primarily relate to/support the delivery of 3W services'.

33 When determining this the chief executive will consider whether *more than half the employee's time* is spent undertaking duties/responsibilities that primarily relate to 3W services, and whether the removal of duties that do *not* relate to 3W would substantially change the employee's role.

34 A 3W specialist employed by a ServiceCo would likely be caught, assuming more than 50% of their time is spent on 3W related matters.

34.1 A number of adverse impacts could flow from this if the WSE takes over the employment of that person (without even considering whether the WSE would be able to manage/support those new employees). The loss of that staff member (bearing in mind they may be difficult, if not impossible, to replace) is likely to materially compromise the ability for the ServiceCo to perform *other* water related services (e.g. relating to drainage or flood protection and control, transport stormwater and non-urban stormwater) under:

(a) its contracts with its owner council; and

(b) its contracts with other councils and third parties.

34.2 The value of those contracts (to all parties) would be diminished accordingly and could result in default/breach or those services being unavailable in the way they are now. The issues will be made worse if the relevant staff leaves ahead of the transfer date (1 July 2024) as a result of the uncertainty created by the 3W reform process.

35 If the relevant ServiceCo employee's duties/responsibilities primarily relate to, or primarily support, the delivery of 3W services, and the employee is not a senior manager, the chief executive of the WSE must offer that employee an employment position. As such, Schedule 1 to the WSEA creates entitlements for employees and it is not just a matter for agreement between the WSE/NTU and a ServiceCo.

36 The employee may choose to remain on the terms of their existing agreement, or accept any new agreement offered by the WSE. The employee is not obligated to accept any offer made by the WSE.

PART TWO: ACTIONS

37 To the extent not already underway, a ServiceCo (and its owner council) should consider doing the following:

Categorise water services related activities

38 The ServiceCo should identify which of its ongoing water related services/activities relate to:

38.1 **Cat 1 3W services:** these are services/activities that:

(a) the ServiceCo provides to its owner council and/or other local government organisations; and

(b) relate to water services which will be provided by the WSE after 1 July 2024 (i.e. water supply, wastewater and urban storm water services).[2]

38.2 **Cat 2 water services:** these are services/activities that:

(a) the ServiceCo provides to its owner council and/or other local government organisations; and

(b) relate to water services which will **not** be provided by the WSE after 1 July 2024 (e.g. non-urban stormwater, transport stormwater, drainage and flood protection and control).

38.3 **Cat 3 water services:** these are services/activities that:

(a) the ServiceCo provides to third parties who are **not** local government organisations; and

(b) relate to 3W infrastructure being constructed by a developer that will eventually vest in the council/WSE (e.g. a greenfields residential subdivision).

Identify what portion of assets/property, staff and contracts relate to Cat 1 3W services

39 The ServiceCo should then identify the following:

39.1 what ServiceCo staff are dedicated to (or the portion of their time that relates to) providing Cat 1 3W services (i.e. and assessing whether and who spends more than 50% of their normal work on that work type);

[2] Note: we have not contemplated a situation where a ServiceCo provides services to a third party, who provides its *own* services to a local government organisation that relate to 3W services.

39.2 what ServiceCo assets/property are used exclusively or predominantly for Cat 1 3W services;

39.3 what ServiceCo assets/property has more than one purpose or use, but their primary purpose or predominant use is for the delivery of Cat 1 3W services;

39.4 what ServiceCo contracts (where ServiceCo is the service provider) have a Cat 1 3W component, including those with:

(a) the ServiceCo's owner council; and

(b) other local government organisations.

39.5 what ServiceCo contracts (where ServiceCo receives goods/services from suppliers) have a Cat 1 3W component.

40 Further due diligence would then be needed on those items which are not clearly out of scope.

Request DIA/NTU to provide its establishment water services plan

41 The ServiceCo should ask DIA/NTU to provide the 'establishment water services plan' for its WSE (as set out under clause 9 of Schedule 1 to the WSEA), or the detail that will be included within that plan, including (in particular):

41.1 the processes, policies, and guidance for identifying the staff, assets, liabilities, and other matters (including contracts, information and equipment) that will be transferred to the WSE (by the ServiceCo); and

41.2 the proposed timing for the transfer by the ServiceCo of staff, assets, liabilities and other matters to the WSE.

Request the draft allocation schedule

42 The ServiceCo should request the establishment chief executive to provide its draft 'allocation schedule' (as set out under clause 5 of Schedule 1 to the WSEA), which sets out the assets, liabilities, and other matters of the ServiceCo that DIA/NTU considers:

42.1 relate *wholly* to the provision of Cat 1 3W services (including contracts);

42.2 relate *partly* to the provision of Cat 1 3W services, and *partly* to the provision of other services (including Cat 2 and Cat 3 water services).

43 NTU has invited engagement around ServiceCos. Having made the headline enquiries mentioned above and with an understanding of the approach the NTU is actually proposing, a ServiceCo and its owner council should promote (where relevant) to the NTU their assessment/classification of staff and activities and preferred 'treatment' and outcome in the context of assets, liabilities and other matters to be transferred to the NTU.

Assess which decisions may impact the assets, liabilities or other matters to be transferred to the WSE

44 Under clause 32 of Schedule 1 to the WSEA, a local government organisation must obtain approval from DIA before it makes a decision which will have a 'significant negative impact on the assets, liabilities, or other matters that are to be transferred to the WSE'.

45 The inquiry actions mentioned above will help the ServiceCo to assess which of its 'decisions' (looking out over the next 18 months) may be subject to such oversight/approval. Currently, it is unclear how these oversight provisions will play out in practice. If a ServiceCo is unsure whether a decision will have a 'significant negative impact', it would be prudent to engage with DIA early on the matter.

'no worse off'

46 The 'support package' promised by the Government (which will be funded by the relevant WSE) contains a 'no worse off' component. This is intended to ensure that financially, no council is in a materially worse off position to provide services to its community directly because of the 3W reform.

47 The council/ServiceCo should also consider and seek to quantify any likely adverse financial/commercial impact on the ServiceCo arising from the application of the WSEA transfer provisions if the 'least harm' approach we suggest above is not adopted. This will be important to making the case to receive a 'no worse off' payment (referred to in clause 36 of Schedule 1 to the WSEA), as compensation for any net detriment. Relevant to this assessment will be:

47.1 the commercial value of the ServiceCo as a council investment (including loss of dividend income, and what this may mean for funding the council's other activities which rely on that as a source of funding); and

47.2 the capacity/capability of the ServiceCo to meet its existing (potentially long term) contractual commitments to other parties;

47.3 the ability for the ServiceCo to continue to operate profitably and viably absent the relevant staff, assets and business lines which have been identified for transfer to the WSE.

48 For example, if a ServiceCo loses 3W related business and/or expertise, its ongoing profitability or viability may be materially compromised (e.g. because it loses efficiencies of scale and scope). This could mean it would no longer be able to provide other non-3W related services to its owner council. Its owner council would also lose a source of recurring revenue, which may threaten its financial ability to sustainably perform non-water related roles and functions at the existing level of performance.

49 DIA has previously agreed to work with LGNZ and Taituarā to develop agreed principles for how the assessment of financial sustainability (described above) will be undertaken; the methodology for quantifying this support requirement; and the process for undertaking the associated due diligence process with councils. The Government purported to cap this support at a maximum of $250m (across the

country) but, as may soon become evident, the actual nature and extent of the impacts that could arise from a too zealous application of the transfer provisions to ServiceCo arrangements may be significant – bearing in mind that those transfer provisions did not exist at the time of the support package was conceived.

50 The establishment period under the WSEA is now underway. Now is the time to engage with DIA (through or alongside LGNZ and Taituarā) on how the processes in the water services legislation will be applied in practice so that each council (and its ServiceCo) can assess potential adverse impacts and:

50.1 seek to avoid/mitigate them; and

50.2 quantify any adverse financial impact and negotiate compensation through the 'no worse off' support package.

Title: **23-16 Proposed Submission on Water Services Economic Regulation and Consumer Protection Bill 2022**

Section: Chief Executive's Office

Prepared by: Yvette Kinsella - Special Projects Manager

Meeting Date: Thursday 26 January 2023

Legal: No	Financial: No	Significance: **Medium**

Report to COUNCIL/TE KAUNIHERA for decision

PURPOSE - TE TAKE

The purpose of this report is to present information to Council about the Water Services Economic Efficiency and Consumer Protection Bill so Council can decide if it wishes to make a submission on the Bill.

SUMMARY - HE WHAKARĀPOPOTOTANGA

On 13 December 2022, the Water Services Economic Regulation and Consumer Protection Bill (the Bill) had its first reading in the House.

As the control of water services delivery is moving to independent water services entities, some mechanisms are needed to regulate pricing, so water services are affordable and to protect other interests of water consumers. The Bill outlines the proposed regime to carry out these functions.

The local government sector is still assessing the implications of the Bill for councils and communities. Staff will continue to engage in conversations across the sector to identify further matters that should be included in a Council submission.

In the meantime, LGNZ and Taituara have prepared draft submissions (**as attached**) that outline some of the key issues, including:

- importance of economic regulation
- information disclosure requirements
- timeframes for introduction of regulations around quality and price
- debt capacity of water services entities
- potential for conflict between the directives of regulatory functionaries
- extent of the powers of the Commerce Commission.

Public submissions on the Bill close on 12 February 2023. Submissions from local government close on 17 February 2023.

The Water Services Economic Regulation and Consumer Protection Bill is the fourth of four pieces of legislation that are part of Government's Three Waters Reform programme. This report should be read alongside **Report 23-14** and **Report 23-15** also on this agenda.

There will be a workshop with Council on three waters reforms on 15 February 2023.

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

RECOMMENDATIONS - NGĀ TŪTOHUNGA

That the Council/Te Kaunihera:

1. **Instructs the Chief Executive to prepare a submission to the Finance and Expenditure Select Committee on the Water Services Economic Efficiency and Consumer Protection Bill endorsing the relevant points from the LGNZ and Taituara draft submissions by 17 February 2023.**
2. **Directs the Chief Executive to include any other emergent matters in the submission that may impact negatively on Te Tairāwhiti and/or the Gisborne District Council's ability to deliver its functions.**
3. **Resolves that the Mayor (and/or her delegate) will present in-person to the Finance and Expenditure Select Committee on the points raised in the Gisborne District Council submission.**

Authorised by:

Nedine Thatcher Swann - Chief Executive

Keywords: submission water services economic regulation and consumer protection bill, bills before parliament, finance and expenditure select committee, Gisborne district council submission, three waters reform

ASSESSMENT of SIGNIFICANCE - AROTAKENGA o NGĀ HIRANGA

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: **Low** Significance
This Report: **Low** Significance

Inconsistency with Council's current strategy and policy
Overall Process: **Low** Significance
This Report: **Low** Significance

The effects on all or a large part of the Gisborne district
Overall Process: **Medium** Significance
This Report: **Medium** 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

1. This report is part of a process to arrive at a decision that will/may be of **Medium** level in accordance with the Council's Significance and Engagement Policy

2. The economic regulatory regime will have limited impact on Council and its ability to carry out its functions, however, the establishment of an economic regulatory regime is critical to ensuring the ongoing affordability and transparency of water service provision. The effectiveness of the regime will have a direct impact on community wellbeing and the outcomes will be of significant interest to households and businesses.

TANGATA WHENUA/MĀORI ENGAGEMENT - TŪTAKITANGA TANGATA WHENUA

3. The Three Waters Reform programme is being led by the DIA on behalf of government. Tangata whenua are engaging directly with government on the policy aspects of the reforms through iwi channels.

COMMUNITY ENGAGEMENT - TŪTAKITANGA HAPORI

4. The Three Waters Reform programme is being led by the DIA on behalf of government. To date, the level of community engagement has been very low and only through the Three Waters website.

5. The DIA is about to employ establishment Chief Executives for the four WSEs and a priority for them will be to start conversations directly with communities including to explain the reforms.

NEXT STEPS - NGĀ MAHI E WHAI AKE

Date	Action/Milestone	Comments
14 February 2023	Public submission due	
15 February 2023	Workshop with Council on three waters reforms	
17 February 2023	Local government submissions due	
March/ April 2023	Presentations in person to select committee	
June 2023	Enactment of legislation expected	

ATTACHMENTS - NGĀ TĀPIRITANGA

1. Attachment 1 - Taituara draft Submission Waters and Economic Regulation December 2022 (1) [**23-16.1** - 7 pages]
2. Attachment 2 - LGNZ Outline of submission on WSL Bill and Economic Regulation Bill [**23-16.2** - 29 pages]

Submission of Taituarā
to the
Finance and Expenditure Select Committee
regarding the
Water Services Economic Efficiency and Consumer Protection Bill

What is Taituarā?

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

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

Our vision is:

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

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

We offer the perspectives of a critical adviser.

Taituarā is a managerial organisation as opposed to a political one. Our role therefore is to advise on consequence, and to assist policymakers to design a policy

that can be implemented effectively. We participated (and continue to participate) in the reform process to provide these perspectives. As with our work in this area, our submission takes the perspective of a 'critical adviser' in the reform process – supportive of the need for affordable, sustainable three waters services, while wanting to ensure the reforms work effectively.

Economic regulation is fundamental to the success of three waters reform.

This is the third Bill implementing the Government's policy decisions to reform the delivery of so-called three water services.

Reforms are likely to founder if there is any suggestion that water users are being 'overcharged' for their service, or that the funds raised are not being spent 'appropriately'. Overseas jurisdictions rely on a framework of economic regulation to exercise some control over price, quality, and investment. Typically, this regulation is based on requirements to disclose key information about charges, costs, and investments (a good example are the disclosure regulations that apply to various parts of the energy sector in this country).

Economic regulation will play an important role in securing overall consumer confidence in any change proposals.

The headline policy intent and design of this Bill is therefore quite sound. The remainder of this submission therefore makes recommendations that are intended to support the Bill to better achieve the stated objectives.

It is also appropriate that the regime for economic regulation of three waters services is purpose built. Although three waters infrastructure have similar attributes to telecommunications and energy networks, there are some important differences. Three waters infrastructure is subject to a regime designed to promote a set of public health outcomes (administered by Taumata Arowai) and a mix of national and regionally set environmental standards. And unlike these other services, three waters services are necessary to sustain life.

Additonally, some features in the design of the water services entitites (WSEs) should influence the degree of regulation. While the model of public ownership is somewhat unconventional, there are significant restricitons on the ability to take the WSEs outside of this ownership model. The Water Services Entities Act 2022 expressly prohibits the WSEs from distributing any surplus to their owners (and one of the unconventional aspects of the ownership model is that it does not entitle the owners to any of the revenues or surplus).

This points to a regime that is 'lighter-handed' and more about supporting the accountability of the WSEs to ther public for their planning and financial managerment (thus avoidng price shocks or at least minimising them). Information disclosure regimes and the associated 'benchmarking' are a commonly used tool to introduce some degree of competitive tension into monopoly services.

The purpose cl the regulatory regime could be better defined.

We note the purpose of the regulations (as per clause 3 and 12) has been modelled on the Telecommunications Act 2001. Taituarā considers that this coild be further improved,

We are concerned that the above purpose clause does not have a specific recognition of long-term sustainability of services. This is critical to counteracting the understandable, but undesirable, tendency to short-termism, and promoting long-term management of the assets. Arguably sustainability of service might be captured by the phrase 'long-term benefit of consumers', though it should be clearer.

The purpose statement refers to service quality that reflects consumer demands. In many services that's appropriate. However three waters services are subject to a higher level of regulation of quality standards than consumers might set in a free market, especially safety and environmental standards. The purpose statement should be expanded to include regulatory requirements.

WSEs cannot distribute profits to their owners. That being the case, there is little incentive for these entities to price in a manner that would generate excess profits. We are not convinced that there is any need for 12(d).

<u>Recommendation</u>

1. That the Select Committee amend clause 12 by
   - **a. adding references to the ,ong-term sustainabvility of service**
   - **b. adding references to consistency with regulatory standards**
   - **c. deleting subclause 12(d) as unnecessary given the design festures of water service entities.**

The regime's prescriptiveness may inadvertantly work against some of the reform objectives.

Our submission on the Water Services Entities expressed a concern that the wide range of regulatory and policy instruments that bind WSEs could limit the

governance role, and give rise to some difficulty recruiting skilled directors. If this occurs then one of the Government's 'four botton lines' for the reforms, good governance, would be placed at risk.

While we support economic regulation in principle, we the Commerce Commission has wide powers and a very wide scope as to the matters that it can regulate. In particular we look at the range of matters where the Commission may introduce an input methodology, and the range of matters subject to section 15 determinations. We refer the Committee to clauses 27 and 34, and 39 (more on that shortly).

Legislation that is over-prescriptive also works against two of the principles under which the WSEs are expected to operate. Specifically the more prescriptive lthe legislation, the less empowered WSEs are to "(be) *innovative in the design and delivery of water services and water services infrastructure*" or to apply "water-sensitive design" methods. Often the generation of efficiency gains arises out of an innovation – the Committee should be wary of this,

Drinking water and wastewater services differ from,other networks in that they are subject to health regulation through Taumata Arowai. So for example, the New Zealand Drinking Water Standards set standards relating to bacterial, protooal and chemical contamination. There are also standards relating to the aethetics of drinking water. These are all matters of quality.

We are therefore unclear how the economic and consumer protection regime fits with the health and regulatory requirmeents set by Taumata Arowai. Is there the potential for the two regulators to duplicate or (worse) set a conflicting standard. The Committee should invite officials to clarify excatly what quality standards will be set by the Commission and how those will differ from those that are set by Taumata Arowai. As an additional backstop the Bill should specifically include Taumata Arowai as one of the parties that must be consulted in developign inute methodologies and qualty standards.

One of the checks on regulatory agencies is a requirement that they undertake an anlysis of the costs and benefits of their regulatory proposals. We refer the Committee to examples such as the analyses that the Minsitry for the Environment prepares in regards the introduction or amendment of National Policy Statements and National Environmental Standards as a model.

Such a requirement shoudl apply to the issuing of any clause 15 determinations required under clauses 27, 34 and 39. There should be some tolerance built in to allow the Commissioner to avold producing a regulatory analysis or tailor such an analysis for amendments are minor or technical.

Recommendations

2. **That the Select Committee seek advice from officials regarding the quality standards that the Government proposes be set by the Commerce Commission and how they differ from those that Taumata Arowai is empowered to set.**

3. **That the Select Committee include an explicit requirement on the Commission to consult Taumata Arowai when developing input methodologies and quality standards.**

4. **That the Select Committee insert requirements on the Commission to undertake a regulatory analysis of any proposals made under clauses 27. 34 or 39.**

Clause 39 stands out as particularly intrusive.

Clause 39(3)(b)(ii) empowers the Commission to direct certain types of investment. Clause 39(3)(b)(ix) spoecifies a particular type of project evalaution methodology – cost/benefit analysis.[1] And clause 39(3)(b)(xi) appears to give the Commission powers to dictate consultation and engagement provisions over and above those that Parliament set in the Water Services Entities Act.

Clause 39(3)(b)(i) provides the Commission with the power to regulate *a particular approach* (emphasis supplied) to risk management – we do not disagree that the WSEs should be managing risks in accordance with commercial and best practice.[2] But this clause goes further and empowers the Commission to regulate a particular approach to risk management. We submit that this effectively inserts the Commission into what is an operational matter, and by so doing it also puts the Commission (and Government) in the firing line should there be a fault in any regulated approach.

Similarly, clause 39(3)(b)(vi) provides the Commission with powers to "adopt asset management plans and practices". Asset planning has been a practical requirement

[1] There are many different forms of project evaluation methodologies – for example, the Better Business Case model, multi-criterion analysis, return on investment or net present value and so on. The Commission should not be specifying particular procedures, rather it should require only that a methodology is applied.

[2] See section xx of the Water Services Entities Act 2022.

in three water services since around 1996, and a legal requirement since 2010. And again, its commercial and best practice. The WSEs are legislative required to develop both an infratructure strategy and an asset plan.[3] The Bill therefore appears to contemplate prescription as to an approach or to the content of these plans.

Recommendation

5. That the Commission agree to:
- **a. delete the words *"a particular approach"* from 39(3)(b)(i**
- **b. delete clause 39(3)(b)(ii)**
- **c. delete clause 39(3)(b)(vi)**
- **d. delete clause 39(3)(b)(ix)**
- **e. delete clause 39(3)(b)(ix)**

Commission directions to amend funding and pricing plans should come with greater mandatory disclosure on the Commission's part.

Clauses 51 to 53 are another example of the broad nature of the powers afforded to the Commission. The Commission has the power to review funding and pricing plans and issue what is effectively a direction to amend the plan.

The Bill appears to contemplate that the Commission's review would come after a final plan has been adopted and made publicly available. We say this because there is no reference to any consultation or engagement process, nor is there any qualifier such as the word 'draft' in the reference to the funding and pricing plan in clause 51.

That cannot be what was intended, that a WSE would develop and engage on a plan, then adopt only to have the Commission tell them to reconsider an aspect or aspects of the plan (in effect that the WSE has 'got it wrong'). The Commission should be weighing in during the drafting of the plan in the first instance, with a further final check before the plan in made publicly available. That process may necessitate amendments to the Water Services Entities Act 2022 to require WSEs to send drafts and proposed final funding and pricing plans to the Commission.

As the legislation currently stands the Commission need only provide a WSE with a direction to recnsider the WSE's plan. It appears this direction need not even be in writing. Given the Commission's power overrides a policy decision made by the WSE Board and its community, there should be a greater onus on the Commisson to

[3] See sections yy and zz of the Water Services Entities Act 2022

document its reasons and provide some suggestion as to how the WSE might amend the plan to give effect to the principles.

Recommendations

5 That the Select Committee agree to amend clause 51 to require the Commission to review drafts of funding and pricing plans during the engagement on these documents and before the final plans are adopted by the WSE.

6 That the Select Committee agree to amend clause 52 to require that any direction from the Comission (i) be in writing and (ii) set out the nature of the inconsistency between the charging principles and the funding and pricing plan; the Commission's reasons for reaching this conclusion and (iii) what actions or actions the entity might take to resolve the inconsistency.

WATER SERVICES LEGISLATION BILL AND WATER SERVICES ECONOMIC EFFICIENCY AND CONSUMER PROTECTION BILL SUBMISSION // OUTLINE

Background

The Government introduced the Water Services Legislation Bill (WSL Bill) and the Water Services Economic Efficiency and Consumer Protection Bill (Economic Regulation Bill) on 8 December 2022. These two bills build on the Water Services Entities Act, which became law on 14 December 2022. They set out the technical detail of three waters infrastructure and service delivery:

- The WSL Bill sets out the Water Services Entities' functions, powers, obligations, and oversight arrangements.
- The Economic Regulation Bill regulates the price and quality of water infrastructure services and protects consumers.

Both bills had their first reading on 13 December 2022 and were referred to the Finance and Expenditure Committee, which has set a deadline of 17 February 2023 for written submissions from local government (although on 21 December it wrote to councils saying requests for extensions may be considered). LGNZ recognises that this timeframe is very difficult for councils. It coincides with the holiday break and councils preparing to submit on the Resource Management Bills and Future for Local Government Review. We have repeatedly raised our concerns around these timeframes with the Government.[1]

Our key points

Water Services Legislation Bill

- The council-WSE relationship will be critical for both parties. It needs to put communities first and enable (rather than compromise) the ongoing role and functions of councils. While WSEs are expected to 'partner and engage' with councils, what this means in practice must be clarified.

[1] Councils are able now to request an extension to the RM bills submission deadline to 19 February (contact the Environment Select Committee). The deadline for feedback on the Future for Local Government draft report feedback is 28 February.

- We are unhappy with provisions that are different from what the Rural Supplies Working Group envisaged. Our view remains that there should be an opt-out option available to communities that can demonstrate that they satisfy the 'transfer requirements'.
- We are concerned about the provisions relating to councils collecting water charges on behalf of WSEs until 2029. 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.
- There are number of provisions that need clarifying or amending to ensure councils do not attract unfunded mandates under the new system or are not financially disadvantaged.
- We are concerned about the process for determining councils' three waters debts.
- The addition of provisions on subsidiaries based on the CCO provisions of the Local Government Act 2002 is a material change that we do not support.
- We have concerns around who will 'wear the liability' when things go wrong, and what legal remedies will (and should) be available.

Water Services Economic Efficiency and Consumer Protection Bill

- The Bill views the water services sector as similar to existing monopolised utility industries, which we think is the wrong approach. For example, the Bill includes an explicit reference to limiting WSEs' ability to "extract excessive profits". This language is inflammatory, inaccurate and unnecessary given the proposed public ownership model
- We think the information disclosure elements of the Economic Regulation Bill can deliver on most of the regulatory policy outcomes the Government has targeted for improvement, and should be the primary initial focus of the regime.
- Introducing quality regulation in the first regulatory period is an unrealistic target.
- Price-quality regulation should similarly be delayed and made subject to a further recommendation by the Minister. We are concerned about the potential impact price-quality regulation could have on the short/medium term debt capacity of the new water services entities.

The purpose of this outline

This outline has two purposes:

1. To help you prepare your own submissions. The outline flags issues that we think all councils will be concerned with and potentially want to submit on.
2. We really want your feedback to shape our actual submission. Depending on your feedback, our submission could look quite different from the outline we're sharing below.

The outline is structured in two parts – one covering each Bill – followed by a glossary and questions for feedback.

How we'll develop LGNZ submissions on the two Bills

This **outline** sets out where we intend to focus our submissions and the key points we plan to make. Please let us know what you think. There is a list of questions we especially welcome your feedback on at the end of this document.

The deadline for feedback on the outline is **Friday 27 January** – please email your views to submission@lgnz.co.nz

During January, we'll be developing our **draft submission**. Subject to feedback, this will largely replicate and build on the submission outline, and add suggestions about how to improve the drafting of legislative clauses.

We are planning to share that draft with you on 10 February. We will have a very short window of feedback on that draft, given the Select Committee deadline for council written submissions of Friday 17 February.

Water Services Legislation Bill

Topic	Response
General relationship between councils and WSEs	• The council-WSE relationship will be a critical one for both parties. It needs to be set up in a way that will enable (rather than compromise) the ongoing role and functions of councils. • However, the WSL Bill tends to treat councils as just another stakeholder group for a WSE to engage with, while implying that the WSE acts as an independent self-sufficient organisation. This 'us and them' approach has the potential to be at the expense of a more joined up focus on local communities' needs. • The legislation also needs to reflect that WSEs will operate within a broader system that services communities, with councils remaining central to that overall picture as well as being democratically accountable. Communities should expect both service organisations 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. • However, there is an alternative view that if this reform progresses as proposed, councils will lose control over their assets and lose their three waters knowledge base. This should mean that councils don't retain any responsibility for water service delivery, including issuing invoices. • Existing relationships, experience and capabilities of councils will need to be respected and leveraged if the overall system is to operate well at a local level. And expectations on councils, particularly during the transition

	and establishment phase, need to be carefully managed and take account of the fact that councils will lose their three waters capability and capacity when staff transition to the new WSEs.
Functions of Water Services Entities	• The WSL Bill will give WSEs a number of new 'functions' (in addition to those included in the WSE Act 2022). We support the specific requirement to 'partner and engage' with councils. • However, it's unclear what 'partner and engage' with councils will actually mean in practice, including how it will connect with councils' placemaking and community wellbeing functions. No expectations are set and no guidance is provided (*see also 'relationship agreements' below*). • The obligation to 'partner and engage' should not amount to an expectation that councils will be involved in three waters service delivery if the reform proceeds as proposed and councils lose control of three waters assets.
Absent alignment of 'purpose' between councils and WSEs	• We are concerned that the lack of shared 'purpose' between councils and WSEs will create tension. Under the Local Government Act 2002 (LGA), councils are required to promote the social, economic, environmental and cultural wellbeing of communities both now and in the future. WSEs do not share this purpose. This lack of clear alignment could create tension and favour the 'plan implementer' (WSEs) over the 'plan maker' (councils). • We think the WSL Bill should expressly recognise that councils' ability to influence three waters services is limited to the tools available under the new legislation. Councils should not be accountable or responsible for three waters outcomes or other outcomes that depend on WSE decisions, which may not align (in substance or timing) with a council's broader planning frameworks. • What happens if a council ends up in conflict with a WSE because the council's view of 'community needs' is at odds with what the WSE can justify or afford from a (wider service area) financial sustainability perspective? This needs to be clarified. • What happens if a WSE limits or stops the provision of services to an area because it assesses that climate change or natural hazard risks mean a higher level of investment is uneconomic? This could be the case if the cost of repair exceeds available financial resources when weighed against competing priorities. And what happens if the WSE's actions don't align with a council's broader plans to build resilience to or respond to climate change/natural hazard risks in a certain area? This needs to be clarified. • A WSE must pursue statutory objectives focused on efficiency, financial sustainability, and best commercial practice. There is potential for misalignment between these drivers and councils' broader focus that encompasses placemaking and community wellbeing. But in resolving this tension, councils will potentially be limited to escalating issues to the RRG

	and providing input on relevant planning/policy documents (unless resolution is included in a 'relationship agreement' – see discussion below).
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. Their communities will assume a council still has sway and a voice. This assumption could be expressed at the ballot box, even if an individual council and its councillors (including those on a RRG) have limited control over actual service delivery. • We think the LGA should expressly recognise that a council's ability to achieve some aspects of its 'purpose' will be heavily dependent on WSE decisions – over which it has limited or no control. As such, the duties of a council should expressly reflect those limits. • Given an element of political accountability is inescapable, we think the model should be changed in one or more of the following ways: a. Councils be given a louder voice that WSEs must listen to on key topics (for example, around place-making and 'master planning'). This would mean a council can set some of the operating parameters that a WSE must respond to, consistent with its duties and objectives); b. 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. (As Resource Management Reform beds in, this would extend to an approved regional spatial strategy.)
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'. This would ensure that all councils/WSEs benefit from a best-practice approach to matters they all share in common. It would also help develop consistency and reduce the need to 'learn' and apply bespoke arrangements. • 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. This could mean, for example, an express expectation of joint care and stewardship for all the systems impacted by their respective actions for the benefit of local communities. It could mean finding synergies that leverage and enable each organisation to succeed and avoid duplication of resource and cost. There should be an express statutory basis and mandate for this – which could be analogous to the need for a

	WSE to address Te Mana o te Wai and respond to statements by mana whenua. • 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. • There are suggestions throughout the Bill that the scope for engagement is limited to the operation of stormwater, land drainage, or related services (cl 468(1)(c)(iii)). This is too narrow. There are multiple touchpoints for the WSE/council relationship, all of which need to be identified and managed. This would also provide an opportunity for process synergies. For example, consulting communities once on the full range of things each cares about, to lower cost, create efficiency and further develop expertise. • Relationship agreements with regional councils should be more limited given that they will continue to play a regulatory role. • We think some of the planning interface arrangements used in the Scottish Water model could be adopted in water services legislation, for example: a. WSEs should contribute to the writing of 'main issues reports' (which are front-runners to local development plans); b. WSEs should contribute to the writing of any proposed local development plans; c. WSEs should contribute to the writing of an 'action programme', which supports delivery of local development plans; and d. WSEs should comment on all outlines or full planning applications referred to by local authorities.
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 Māori 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. Otherwise some local priorities may need to be sacrificed to deliver on central government priorities.
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 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.

	• The process required to subsequently transfer the service to an alternative operator is too high a bar. Our view remains that there should be an opt-out option available to communities that can demonstrate that they satisfy the 'transfer requirements'.
Charging provisions – collecting charges	**Councils 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 collects 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 if a charging agreement is not agreed upon, the Minister has power to impose terms. • While our preference is that councils aren't responsible for collecting charges, if it is not practical for WSEs to stand up their own billing/collection systems on 1 July 2024, then in our view any interim arrangement should be supported by agreed principles and limits to protect councils' interests. The WSE will need to carry the risk of council resources and systems not being able to do what the WSE might want. • The provisions in the WSL Bill are based on those in the Infrastructure Funding and Financing Act 2020 (IFF) for collecting IFF levies. However, these circumstances are very different. There are range of other matters that need to be recognised: a. The WSL Bill contains a diverse range of charges. Are councils expected to invoice and collect them all, as and when requested by the WSE? Requiring councils to collect a diverse range of charges would have implications for existing processes/IT systems. This would create additional costs for councils. The full cost of any enhancements will need to covered by the WSE. b. Alternatively, it should be very clear that each council will only do what its current systems are capable of doing, which may fall short of what the WSEs want. Three waters billing will not be councils' core business nor a priority in term of the performance of their continuing functions. c. If a WSE utilises the IFF itself, would it be appropriate for councils to collect those levies (given that the council is not the proposer of the project which the levy will support)? d. Councils will need to be fully insulated from any risk associated with this function and not liable for failures if they exercise reasonable endeavours. e. Councils will be entitled to favour their own requirements. Unless separate payments are made (for example, payers are asked to pay the

amount invoiced on behalf of the WSE direct to a WSE bank account), then receipts and prepayments received into a council account should first be applied to council rates (i.e. the WSE will wear the risk of any shortfall).

f. The Bill should specifically address (and insulate councils from) compliance risk associated with Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and responsibility for accounting for GST.

Geographic averaging:

- According to the Bill, 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 determinations (which will not be in place on 1 July 2024).
- The transitional provisions contemplate a WSE carrying forward existing tariff or charging structures until (as late as) 30 June 2027.
- A core pricing principle (which, if not brought forward by regulations, will apply from 1 July 2027) is that charges should 'reflect the costs of service provision'. Given the way the principle has been expressed, and then qualified, it suggests a starting point of standardised user pricing by reference to the WSE's total cost base. The Bill says that charging a group of consumers differently may only occur if the group receives a different level (or type) of service, or the cost of providing the service to that group is different. But even then, a WSE board may decide not to apply a 'costs should lie where they fall' approach (including in order to remedy prior inequities in the provision of services), or the WSE CE may discount charges that would otherwise apply.
- Geographic price averaging of residential water supply/wastewater services is a sensitive issue – as is addressing historic service inequities. This has been recognised by their inclusion as additional topics that can be addressed in the GPS.
- Councils have expressed concern that geographic averaging of water services charges may create new inequities. For example, should residential consumers in a metropolitan area (who benefit from the cost efficiencies that come from operating at scale in a defined location) share in the (naturally) higher costs involved in delivering a similar level of service to a rural and provincial residential consumers? This issue becomes

	even more complex where there are strongly held views about the level and quality of previous investment in the water services assets. Conversely, using metro areas' scale to subsidise costs for smaller, rural areas was understood by a number of councils to be an underlying principle of Three Waters Reform. 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. If standardised pricing (for the same level of service) isn't enshrined in legislation, some councils will feel misled by the dashboards provided by the Government, which gave every council within a proposed entity the same cost per household for three waters post-reform. • Individual councils will need to assess how this might apply to them and their communities, after a WSE has indicated how it might be applied in practice. An RRG should have to endorse or mandate this policy before it can be implemented (especially if the funding and pricing policy that allows it only provides high-level guidance). • Supporting cabinet papers released by the Minister indicate that moving to harmonised prices will inevitably take several years, to smooth the impact of changes on individual customers and avoid price shocks. **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. 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.
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. Although this outcome may be forced in the short term, there will be a point of material adjustment down the track, for the reasons discussed below. • 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.

	• It is unclear whether DIA has a plan to address situations where council rates do not drop by an amount equal to what the WSE is charging for water services. This needs to be addressed.
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 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. • A council must agree that network rules created by the WSE (for its stormwater system) will also apply to council systems. Taumata Arowai will be responsible for setting environmental performance standards for stormwater networks. **Management plans:** • 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. • The operational interface and touchpoints will be many and varied. These need to be carefully managed as each council and its WSE find their feet and set up channels of communication and processes to support their ongoing engagement and legal compliance obligations. **Charges:** • 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 (cl 63 of Schedule 1 – new Part 2 of Schedule 1 of WSE Act 2022). But how will councils pay any stormwater services charges if they are not allowed to rate or charge for water services?
Interface with councils' roles and functions	**Carrying out works:** • WSEs will have the power to construct or place water infrastructure on or under land owned by councils. The WSE only needs to provide 15 days' notice where it intends to carry out work. We question how this will work cohesively with council processes, and whether the 15-day notice period is sufficient warning for councils. **Sharing rating information:** • The Act will require local authorities to share rating information kept and maintained under the Local Government (Rating) Act 2002. • Not only do councils need to be compensated for the work required to share this information: a. they need to be insulated from any risk associated with complying with a WSE request (cl 319(2)) that is beyond what the WSE is entitled to ask for; and b. their obligation needs to be subject to what their existing systems are capable of producing (with the resources councils have available, recognising that this will not be their core business nor a priority in terms of the performance of their continuing functions).
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 the Crown and LGNZ (these are referenced in cl26A of sched 1 Part 1, subpart 6 of WSE Act). • The Bill anticipates scenarios where councils may keep holding (some portion of) this debt for a period of up to five years. This may be to accommodate instalment payments over time to match the existing debt repayment profile. But more detail is required from DIA about what is actually contemplated here.
WSE financial reporting	• Should there be an extension/equivalent to the Local Government (Financial Reporting and Prudence) Regulations 2014 for the WSEs?

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.
Application of transfer provisions to CCOs	• A number of issues have arisen with respect to the application of asset/staff transfer provisions to CCOs. These issues are addressed in further detail in **DRAFT** advice from Chapman Tripp (contained in Appendix 1 below). We will expand on this further in our submission.
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. For example: a. What happens if water controlled by a WSE damages council assets? b. 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? c. Will councils or landowners be able to bring judicial review proceedings against WSE decisions on policies/plans that adversely impact the value of their property or other aspects of their economic interests? d. Will councils continue to be liable for past breaches and failures relating to water infrastructure, which they may not now be able to fund?

	• These matters need to be clarified.
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: a. 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 b. 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.
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 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 other's 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 functions.

Water Services Economic Efficiency and Consumer Protection Bill

Topic	Response
Problem definition	• We do not think the Economic Regulation Bill approaches the core 'problem definition' from the right perspective. • The Bill views the water services sector as similar to existing monopolised utility industries. In particular, the Bill aims to limit WSEs' ability to 'extract excessive profits'. We think this language is inflammatory, inaccurate and unnecessary given the proposed public ownership model. • The policy work supporting the Bill suggests the focus of economic regulation should be: a. quality information to support robust asset management; b. efficiency; and c. transparency and accountability for expenditure and investment. • In our view, information disclosure should be the primary focus (at least in the first instance).
Information disclosure	• The information disclosure elements of the Economic Regulation Bill can deliver on most of the regulatory policy outcomes the Government has targeted for improvement. In particular, information disclosure is likely to deliver accountability, transparency and efficiency, and support development of asset management systems and processes. • However, the Government should provide the Commerce Commission with a clear (and focused) direction on the problem definition, which would then inform key elements that need to be covered in information disclosure. This would ensure information disclosure does not end up being overly prescriptive or onerous relative to the Government's objectives. • It appears the Government wants to increase information/transparency around assets held by the WSEs (and their condition), expenditure and revenue/charging. We question whether this is already provided for in the Water Services Entities Act (and the WSL Bill), and whether there is any additional value to be obtained from adding a costly resource- and

	expertise- intensive regulatory reporting and compliance regime into the mix. • The initial 'information disclosure step' (in combination with the other proposed elements of the three waters model) will deliver substantially all of the benefits offered by economic regulation, and solve the most obvious and pressing issues at the centre of the problem definition. • If *just* this information disclosure element was adopted (at least initially), the simplified approach would provide clarity in the early stages of reform. It would be simple to explain and understand, and would: a. Avoid creating a medium/long term source of regulatory risk on day one that is impossible to accurately predict and factor in at a time when key WSE systems (including funding arrangements and long term planning) need to be put in place. b. Ensure councils (and communities) are not required to accept a delivery model with a key element still undecided. By creating clarity at the start of reform, councils would be able to give their communities a clear, simple outline of what to expect. Alternatively, adopting an incomplete regulatory regime will mean New Zealand's communities are committing to potentially negative future outcomes, without an ability to turn back. • Not focusing on information disclosure alone and asking stakeholders to embrace a high trust/high hope approach to a central component of the reform will only heighten existing scepticism around (and potentially opposition to) the proposed reform.
Quality regulation	• Introducing quality regulation in the first regulatory period is an unrealistic target. • Quality regulation applies to other utilities. However, quality regulation requires: a. A clear (and quantified) long-run view of current quality performance across the whole asset base (i.e. a baseline); b. Information on the level of service quality consumers support, and are prepared to pay for; and c. An understanding of what level of quality performance is realistically achievable in the future, on what timeframe and at what cost. • This is particularly important given failure to comply with quality standards exposes both the WSE and individual directors and officers to civil and criminal liability. • Other sectors (e.g. electricity or telecommunications) implemented their quality regulations with an existing historic data set of network performance, which provided a clear baseline and supported a forecast of achievable future performance. Outside of the main metros, we doubt this would be the case for three waters. • The first regulatory period should instead be dedicated to information gathering to support future quality regulation (including engaging with

	communities to understand what they will need from the service). Quality regulation should be introduced, at the earliest, in the second regulatory period, not the first, and utilise information obtained through information disclosure in the first regulatory period. • Information disclosure is likely to achieve most of the aims of economic regulation. Rather than an option to defer (which is the current approach), imposition of quality regulation should be conditional on the Minister making a recommendation on the advice of the Commerce Commission. • The performance requirements that the Commerce Commission may regulate are also unprecedented and unduly intrusive. They would allow the Commission to substitute its own view for the engineering judgement of the WSE. This goes well beyond the incentives-based regulation that has traditionally (and effectively) applied in New Zealand. Not only is the Commission not well placed to carry out this role, but it would compromise the ability of the board to discharge its duties. • The relationship between quality regulation and service quality codes under Part 3 also needs to be clarified.
Price-quality regulation	• Price-quality regulation should similarly be delayed and made subject to a further recommendation by the Minister. • Price-quality regulation is an extremely costly and complex form of regulation. It is not realistic to roll out price-quality regulation just three years into the new regime. It is also likely to represent a disproportionate regulatory burden in light of the gains that can be made with information disclosure alone. • Price-quality regulation aims to address excessive profits and increase efficiency. As we outlined above, excessive profit taking is not an issue in the three waters sector. Efficiency would be addressed through the information disclosure regulation. We think the information disclosure component should be given a chance to do its work, before we move to a more complex, onerous, and costly form of regulation. • Information disclosure has been effective in other sectors. For example, airports are regulated with information disclosure only, and it has been effective in driving efficiency. It doubles as a 'soft' from of price control, because financial returns can be exposed to scrutiny. • Similar to quality regulation, price-quality regulation is more effective with better data. If price-quality regulation becomes necessary down the track, the regulator would be better placed to implement it with two or more regulatory periods of data.
Debt capacity and financial concerns	• We are concerned about the potential impact this regulation could have on the short/medium term debt capacity of the new water services entities. • In particular, we are unsure of the impact this regulation would have on WSEs' ability to meet their share of the 'better off' funding commitment to councils without using the debt needed to meet three waters compliance

	costs (including regulation) and their existing/expected future investment requirements. • If WSEs could *not* fund their mandatory commitments, we think the Crown should fund an interim solution and only look to recover that cost (for example, by transitioning the debt to the WSEs) when the WSEs can handle it without compromising their operations. • We also think WSEs should only make financial support package payments out of 'excess' borrowing capacity, and so long as that debt burden does not result in a materially increased cost to consumers. • If the economic pricing and transitional arrangements create 'abnormal financial circumstances' for the WSEs, we think the Government should provide additional financial support to the entities in order to bridge the gap between: a. The 'known realities' the entities will face during the transition phase; and b. The financial position the modelling *assumes* the entities will be in to operate as intended and start delivering on the benefits intended to accrue from the new model. • This may mean the Government will need to make a short-term compromise on one or more of its policy bottom lines during this initial period of fragility.
Te Mana o te Wai and Te Tiriti obligations	• We would like to get a better sense of how the Commission will account for the WSEs' obligations under Te Tiriti, Te Mana o te Wai, and Treaty settlements. How will these aspects be reconciled with the Commission's well-established economic/input data-based approaches for regulating other utilities? Taumata Arowai is better placed to address these matters. The Commission should have regard to Taumata Arowai's position on these matters.

Glossary

Economic Regulation Bill – Water Services Economic Efficiency and Consumer Protection Bill

IFF – Infrastructure Funding and Financing Act 2020

LGA – Local Government Act 2002

RM – resource management

WSE – Water Services Entity

WSL Bill – Water Services Legislation Bill

Questions for feedback

We welcome your feedback on anything in the above outline or the legislation as introduced. We would particularly appreciate answers to the following questions:

1. Is there anything that we've missed from our submission outline that you'd like to see included?
2. Is there anything we've included that you don't agree with or think we should change?

APPENDIX 1: EXPLANATORY NOTE – COUNCIL CONTROLLED SERVICE COMPANIES

chapman tripp

Memorandum

Date: 21 December 2022

To: Local Government New Zealand

For Your: Information

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THREE WATERS REFORM | COUNCIL CONTROLLED SERVICE COMPANIES

Background

1 The NTU has recently communicated with a number of councils about the application of the asset/staff transfer provisions of the Water Services Entities Act 2022 (**WSEA**) to council controlled organisations (**CCOs**) involved in water service delivery.

2 The WSEA, including as it will be amended by the recently introduced Water Services Legislation Bill (**WSLB**), provides a high level framework for the identification and transfer of CCO water services related assets, liabilities, contracts and staff. The actual impacts will not be a 'one size fits all' thing. The impact will depend on the specific circumstances and operations of the CCO.

3 It will also depend on where the WSE establishment chief executive, DIA/NTU and the Minister (on advice from DIA and other officials) draw the line when applying the principles in the WSEA to determine what is 'in' for transfer purposes and what is 'out'.

4 Where that line is drawn will be determined by:

4.1 the words in the WSEA (as such, there is an opportunity through the select committee submission process for the WSLB to seek changes that accommodate council/CCO concerns); and

4.2 engagement and advocacy with DIA (as policy/system stewards – as well as NTU, which is more focused on standing up the WSEs) to ensure they appreciate:

(a) the potential adverse impacts that could flow from the manner on which the transfer provisions are applied to CCOs; and

(b) that the ongoing financial health and viability of such CCOs is a material consideration and relevant to the overall success of both councils and the 3W reforms.

5 This note:

5.1 sets out how the transfer provisions provided for in the WSEA/WSLB will apply to a wholly-owned CCO infrastructure service company that provides services to the council (and third parties, including other councils) relating to (amongst other things) three waters service delivery (e.g. operations support, asset replacement, repairs and maintenance) – referred to below as a **ServiceCo**;

5.2 highlights potential issues for early discussion with DIA/NTU and to inform council/CCO submissions to the select committee considering the WSLB; and

5.3 suggests the steps that a ServiceCo and/or its council owner could take to identify the relevant issues and impacts for the ServiceCo and engage with DIA/NTU to seek to avoid or mitigate adverse impacts (refer **paragraph 37**).

6 The nature and size of any adverse issues will also depend very much on the approach DIA/NTU proposes to adopt for it comes to a ServiceCo.

7 The preferred outcome would be for DIA/NTU to adopt a 'least harm' approach to the existing ServiceCo model, which is replicated throughout NZ. This part of the current operating model is not broken or a primary focus of the key policy drivers for 3W reform. The existing ServiceCo model is highly integrated and already shaped by commercial drivers, but designed to provide a pricing advantage to councils/ratepayers. This should be maintained (at least in the near term) as it provides material benefits for councils that need to be preserved and can be extended to the WSE. To do otherwise would risk material disruption and give rise to a range of unintended consequences. We understand that, to date, the NTU approach/plan and none of these potential impacts have been explained or surfaced in the general engagement that has occurred to date between the sector (councils/CCOs) and DIA/NTU.

8 A 'least harm' approach would most easily be achieved by:

8.1 in the case of contracts between a council and ServiceCo that are specific to, and exclusively relate to, service support for 3W infrastructure that will transfer to a WSE, substituting the WSE in for the council as the recipient of services under that contract; and

8.2 in the case of global/portfolio contracts (where water services that a WSE will have an interest in are just a part), having the WSE and the council share the benefit of the contract and each be the recipient of services under it – in the case of the WSE just for services that relate to core 3W infrastructure assets the WSE will own.

9 For the purpose of this note, we have assumed that:

9.1 the council owner (not the ServiceCo) owns all local 3W infrastructure assets to be transferred to the relevant water services entity (**WSE**); and

9.2 the ServiceCo provides services (including to its council owner) under contract on arms' length terms and conditions.

PART ONE: HOW THE WATER SERVICES LEGISLATION TRANSFER PROVISIONS APPLY TO A SERVICECO

10 Under the WSEA, **relevant** staff, assets/property, contracts, and liabilities of a 'local government organisation' may be transferred to the WSE. A 'local government organisation' means any council, **CCO** or CCO subsidiary that provides (any) services related to the provision of 3W. This means a ServiceCo providing a *mix* of 3W services and other non-3W related services will be considered a 'local government organisation', and will be subject to the 3W transfer provisions.

Exception for mixed-shareholder CCOs

11 Under the WSEA, a 'mixed-shareholder CCO' is defined as a CCO which has:

11.1 one or more shareholders that are local government organisations; and

11.2 one or more shareholders that are *not* local government organisations.

12 Unlike a CCO wholly-owned by its council, a mixed-shareholder CCO will **not** have its 'assets, liabilities, and other matters'[1] listed on an 'allocation schedule' (and therefore transferred to the WSE). Instead, the WSE will receive all of the *shares* in that mixed-shareholder CCO that are held by the local government organisations. The staff transfer provisions also do **not** apply to a mixed-shareholder CCO.

DIA will prepare an 'establishment water services plan'

13 DIA is required to produce (and publish) an 'establishment water services plan' (see clause 9 of Schedule 1 to the WSEA). This will include:

13.1 the processes, policies, and guidance for identifying the functions, staff and assets, liabilities, and other matters (including contracts) that will be transferred from a 'local government organisation' to the WSE; and

13.2 the proposed timing for the transfer of those functions, staff, and assets, liabilities and other matters to the WSE.

WSE establishment chief executive will prepare an 'allocation schedule'

14 The WSE establishment chief executive must prepare an 'allocation schedule', which specifies the assets, liabilities and other matters (including contracts) it recommends transferring to the WSE that are currently held by 'local government organisations' (see clause 5 of Schedule 1 to the WSEA).

15 When preparing the allocation schedule, the establishment chief executive will set out the assets, liabilities and other matters (including contracts) held by a 'local government organisation' that:

[1] This is a term that is defined in clause 1 of Schedule 1 to the WSEA. It is *very* widely defined and catches everything other than staff which are addressed by a separate transfer mechanism.

15.1 relate *wholly* to the provision of water services; and

15.2 relate *partly* to the provision of water services, and partly to the provision of other services.

16 Like councils, a ServiceCo will be required to co-operate with the relevant WSE and the NTU to facilitate the preparation of the allocation schedule. This includes the provision of information relevant to NTU's planning.

Transferring assets held by a ServiceCo

17 As a general principle, assets/property held by the ServiceCo will be included in the '**should-not-transfer**' section of the allocation schedule if:

17.1 the assets/property has more than one purpose or use; **and**

17.2 the primary purpose or predominant use of the assets/property is **not** the delivery of 3W services.

18 This is a 'guiding principle', which the establishment chief executive must have regard to when preparing the allocation schedule. As such, it is possible that the NTU could seek to add such assets/property to the 'transfer' section.

19 Data held by a ServiceCo (that relates to the provision of 3W services) will be included within the broad definition of 'assets, liabilities and other matters'. As such, that data will be specified in the relevant allocation schedule, and (if it is to be transferred to the WSE) vested in the WSE through the process discussed below.

20 The *proposed new* clause 43(1)(e) of Schedule 1 to the WSEA makes it clear that 'information' held by a ServiceCo that relates wholly to the provision of 3W services will automatically become the information of the WSE.

21 Once the ServiceCo's assets are set out in the allocation schedule, the Governor-General may (by Order in Council) vest those assets in the relevant WSE. The Governor-General will also specify assets that will **not** vest in the WSE (under *proposed new* clause 42 of Schedule 1 to the WSEA).

Transferring debt held by a ServiceCo

22 The WSLB sets out how the relevant WSE will compensate councils for the total debt owed by that council in respect of any 3W *infrastructure*. We have assumed the ServiceCo will *not* hold the relevant 3W infrastructure, and as a result, we have not discussed this debt transfer provision in detail.

23 However, debt held by a ServiceCo *relating* to the provision of 3W services (e.g. debt incurred to enable it to provide 3W services to its owner council) could be transferred to the relevant WSE if it is specified in the relevant allocation schedule.

24 Alternatively, debt outstanding on 1 July 2024 that relates *wholly* to the provision of 3W services will be transferred to the WSE under the 'catch all' provision in clause 43 of Schedule 1 to the WSEA, unless the Governor-General has made an order to

the contrary under clause 42 (i.e. specifically providing that such debt/liability will not transfer to the WSE).

25 However, we note the potential challenge involved in quantifying/allocating a portion of corporate borrowing to a specific activity/assets. This is another matter that will, if relevant, require discussion between the ServiceCo and the NTU.

Transferring contracts held by a ServiceCo

26 Under the WSEA, contracts held by a ServiceCo that relate to the provision of 3W services are included within the definition of 'assets, liabilities and other matters'.

27 The establishment chief executive will specify the contracts held by the ServiceCo that relate wholly or partly to the provision of 3W services, and list these in the allocation schedule for transfer/vesting in the WSE.

28 If a ServiceCo is party to a contract that relates *wholly* to the provision of water services, then the transfer provisions appear to mandate that that contract would vest in the WSE. This makes sense from the council perspective (as recipient of the ServiceCo services – presumably the main scenario the drafters had in mind). It does not fit well where the local government organisation is the service provider which has a range of other business lines.

29 The Minister has significant powers (under *proposed new* clause 52 of Schedule 1 to the WSEA) to give 'directions' to a ServiceCo and a WSE, setting out how a particular contract should be dealt with (regardless of whether it relates wholly or partly to water services). This includes:

29.1 requiring a ServiceCo and a WSE board to negotiate a retention or transfer, or the sharing or splitting (as required) of an existing contract; and/or

29.2 requiring the ServiceCo or the WSE board (or both) to offer any *other third parties* that have rights and obligations under a contract a replacement contract.

30 The WSLB does not *clearly* contemplate (or accommodate) a contract between two 'local government organisations' (i.e. a council and its ServiceCo). In such a scenario, it would make more sense for the ServiceCo to be treated as a 'third party' (even though they are treated as a 'local government organisation' in the rest of the transfer related provisions). Proposed new clause 52 of Schedule 1 to the WSEA should be amended to expressly address this situation. Assuming a ServiceCo is treated as a 'third party' for contracts it has with councils relating to the provision of 3W services (whether its owner council or another council it provides services to), the Minister would be able to:

30.1 require the council and WSE to negotiate the retention or transfer, or sharing or splitting (as the case may be) of that contract; and/or

30.2 require either the council or WSE (or both) to offer the ServiceCo a replacement contract.

The ServiceCo would need to choose (by 1 July 2024) whether to:

30.3 enter into any replacement contract that is offered;

30.4 continue with the existing agreement (in accordance with any requirements set by the Minister); or

30.5 terminate the existing agreement (without compensation).

Transferring staff employed by a ServiceCo

31 To the extent a ServiceCo provides 3W related services and has employees doing that work, it will be classed as an 'existing employer' for the purposes of Schedule 1 to the WSEA.

32 As a result, the chief executive of the department will review the positions of employees employed by the ServiceCo, and will determine whether those positions 'primarily relate to/support the delivery of 3W services'.

33 When determining this the chief executive will consider whether *more than half the employee's time* is spent undertaking duties/responsibilities that primarily relate to 3W services, and whether the removal of duties that do *not* relate to 3W would substantially change the employee's role.

34 A 3W specialist employed by a ServiceCo would likely be caught, assuming more than 50% of their time is spent on 3W related matters.

34.1 A number of adverse impacts could flow from this if the WSE takes over the employment of that person (without even considering whether the WSE would be able to manage/support those new employees). The loss of that staff member (bearing in mind they may be difficult, if not impossible, to replace) is likely to materially compromise the ability for the ServiceCo to perform *other* water related services (e.g. relating to drainage or flood protection and control, transport stormwater and non-urban stormwater) under:

(a) its contracts with its owner council; and

(b) its contracts with other councils and third parties.

34.2 The value of those contracts (to all parties) would be diminished accordingly and could result in default/breach or those services being unavailable in the way they are now. The issues will be made worse if the relevant staff leaves ahead of the transfer date (1 July 2024) as a result of the uncertainty created by the 3W reform process.

35 If the relevant ServiceCo employee's duties/responsibilities primarily relate to, or primarily support, the delivery of 3W services, and the employee is not a senior manager, the chief executive of the WSE must offer that employee an employment position. As such, Schedule 1 to the WSEA creates entitlements for employees and it is not just a matter for agreement between the WSE/NTU and a ServiceCo.

36 The employee may choose to remain on the terms of their existing agreement, or accept any new agreement offered by the WSE. The employee is not obligated to accept any offer made by the WSE.

PART TWO: ACTIONS

37 To the extent not already underway, a ServiceCo (and its owner council) should consider doing the following:

Categorise water services related activities

38 The ServiceCo should identify which of its ongoing water related services/activities relate to:

38.1 **Cat 1 3W services:** these are services/activities that:

(a) the ServiceCo provides to its owner council and/or other local government organisations; and

(b) relate to water services which will be provided by the WSE after 1 July 2024 (i.e. water supply, wastewater and urban storm water services).[2]

38.2 **Cat 2 water services:** these are services/activities that:

(a) the ServiceCo provides to its owner council and/or other local government organisations; and

(b) relate to water services which will **not** be provided by the WSE after 1 July 2024 (e.g. non-urban stormwater, transport stormwater, drainage and flood protection and control).

38.3 **Cat 3 water services:** these are services/activities that:

(a) the ServiceCo provides to third parties who are **not** local government organisations; and

(b) relate to 3W infrastructure being constructed by a developer that will eventually vest in the council/WSE (e.g. a greenfields residential subdivision).

Identify what portion of assets/property, staff and contracts relate to Cat 1 3W services

39 The ServiceCo should then identify the following:

39.1 what ServiceCo staff are dedicated to (or the portion of their time that relates to) providing Cat 1 3W services (i.e. and assessing whether and who spends more than 50% of their normal work on that work type);

[2] Note: we have not contemplated a situation where a ServiceCo provides services to a third party, who provides its *own* services to a local government organisation that relate to 3W services.

39.2 what ServiceCo assets/property are used exclusively or predominantly for Cat 1 3W services;

39.3 what ServiceCo assets/property has more than one purpose or use, but their primary purpose or predominant use is for the delivery of Cat 1 3W services;

39.4 what ServiceCo contracts (where ServiceCo is the service provider) have a Cat 1 3W component, including those with:

(a) the ServiceCo's owner council; and

(b) other local government organisations.

39.5 what ServiceCo contracts (where ServiceCo receives goods/services from suppliers) have a Cat 1 3W component.

40 Further due diligence would then be needed on those items which are not clearly out of scope.

Request DIA/NTU to provide its establishment water services plan

41 The ServiceCo should ask DIA/NTU to provide the 'establishment water services plan' for its WSE (as set out under clause 9 of Schedule 1 to the WSEA), or the detail that will be included within that plan, including (in particular):

41.1 the processes, policies, and guidance for identifying the staff, assets, liabilities, and other matters (including contracts, information and equipment) that will be transferred to the WSE (by the ServiceCo); and

41.2 the proposed timing for the transfer by the ServiceCo of staff, assets, liabilities and other matters to the WSE.

Request the draft allocation schedule

42 The ServiceCo should request the establishment chief executive to provide its draft 'allocation schedule' (as set out under clause 5 of Schedule 1 to the WSEA), which sets out the assets, liabilities, and other matters of the ServiceCo that DIA/NTU considers:

42.1 relate *wholly* to the provision of Cat 1 3W services (including contracts);

42.2 relate *partly* to the provision of Cat 1 3W services, and *partly* to the provision of other services (including Cat 2 and Cat 3 water services).

43 NTU has invited engagement around ServiceCos. Having made the headline enquiries mentioned above and with an understanding of the approach the NTU is actually proposing, a ServiceCo and its owner council should promote (where relevant) to the NTU their assessment/classification of staff and activities and preferred 'treatment' and outcome in the context of assets, liabilities and other matters to be transferred to the NTU.

Assess which decisions may impact the assets, liabilities or other matters to be transferred to the WSE

44 Under clause 32 of Schedule 1 to the WSEA, a local government organisation must obtain approval from DIA before it makes a decision which will have a 'significant negative impact on the assets, liabilities, or other matters that are to be transferred to the WSE'.

45 The inquiry actions mentioned above will help the ServiceCo to assess which of its 'decisions' (looking out over the next 18 months) may be subject to such oversight/approval. Currently, it is unclear how these oversight provisions will play out in practice. If a ServiceCo is unsure whether a decision will have a 'significant negative impact', it would be prudent to engage with DIA early on the matter.

'no worse off'

46 The 'support package' promised by the Government (which will be funded by the relevant WSE) contains a 'no worse off' component. This is intended to ensure that financially, no council is in a materially worse off position to provide services to its community directly because of the 3W reform.

47 The council/ServiceCo should also consider and seek to quantify any likely adverse financial/commercial impact on the ServiceCo arising from the application of the WSEA transfer provisions if the 'least harm' approach we suggest above is not adopted. This will be important to making the case to receive a 'no worse off' payment (referred to in clause 36 of Schedule 1 to the WSEA), as compensation for any net detriment. Relevant to this assessment will be:

47.1 the commercial value of the ServiceCo as a council investment (including loss of dividend income, and what this may mean for funding the council's other activities which rely on that as a source of funding); and

47.2 the capacity/capability of the ServiceCo to meet its existing (potentially long term) contractual commitments to other parties;

47.3 the ability for the ServiceCo to continue to operate profitably and viably absent the relevant staff, assets and business lines which have been identified for transfer to the WSE.

48 For example, if a ServiceCo loses 3W related business and/or expertise, its ongoing profitability or viability may be materially compromised (e.g. because it loses efficiencies of scale and scope). This could mean it would no longer be able to provide other non-3W related services to its owner council. Its owner council would also lose a source of recurring revenue, which may threaten its financial ability to sustainably perform non-water related roles and functions at the existing level of performance.

49 DIA has previously agreed to work with LGNZ and Taituarā to develop agreed principles for how the assessment of financial sustainability (described above) will be undertaken; the methodology for quantifying this support requirement; and the process for undertaking the associated due diligence process with councils. The Government purported to cap this support at a maximum of $250m (across the

country) but, as may soon become evident, the actual nature and extent of the impacts that could arise from a too zealous application of the transfer provisions to ServiceCo arrangements may be significant – bearing in mind that those transfer provisions did not exist at the time of the support package was conceived.

50 The establishment period under the WSEA is now underway. Now is the time to engage with DIA (through or alongside LGNZ and Taituarā) on how the processes in the water services legislation will be applied in practice so that each council (and its ServiceCo) can assess potential adverse impacts and:

50.1 seek to avoid/mitigate them; and

50.2 quantify any adverse financial impact and negotiate compensation through the 'no worse off' support package.

Te Kaunihera o Te Tairāwhiti
GISBORNE
DISTRICT COUNCIL

23-14

Title:	**23-14 Water Services Entities Act 2022 - Summary and Implications**
Section:	Chief Executive's Office
Prepared by:	Yvette Kinsella - Special Projects Manager
Meeting Date:	Thursday 26 January 2023

Legal: No	Financial: No	Significance: **High**

Report to COUNCIL/TE KAUNIHERA for information

PURPOSE - TE TAKE

The purpose of this report is to summarise the changes imposed by the Water Services Entities Act 2022 and the key implications for Gisborne District Council (Council).

SUMMARY - HE WHAKARĀPOPOTOTANGA

The Water Services Entities Bill was released for public submissions in June 2022. It proposed establishing the governance and accountability arrangements for four new super-regional water services entities to deliver water services (drinking water, wastewater and stormwater) in Aotearoa/ New Zealand from 1 July 2024.

The previous Council expressed its concerns to Government about the proposed arrangements outlined in the Bill and requested amendments to:

- improve accountability to communities and strengthen local voice
- align infrastructure investment with local planning
- enhance community wellbeing
- improve the arrangements for the transition.

The Water Services Entities Act was passed on 14 December 2022. It includes some new measures that may see improvements in accountability, alignment and community wellbeing.

A second raft of legislation is now before the House to provide detail on the powers and functions of the new water services entities and to outline a proposed economic regulation and consumer protection regime for water services.

There will be a workshop with Council on three waters reforms on 15 February 2023.

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 - NGĀ TŪTOHUNGA

That the Council/Te Kaunihera:

1. Notes the contents of this report.

Authorised by:

Nedine Thatcher Swann - Chief Executive

Keywords: three waters, three waters reforms, drinking water, wastewater, stormwater, Water Services Entities Act, water services entity Regional Representative Group, Regional Advisory Panel, water services entity board

BACKGROUND - HE WHAKAMĀRAMA

1. In 2017, the Minister of Local Government (the Minister) announced a review of three waters services (Review) in response to the findings of its Inquiry into Havelock North Drinking Water.

The Issues

2. The Review found several issues around water services delivery across the country including:
    - risks to human health and the environment in some parts of the country
    - evidence of low levels of compliance, monitoring and enforcement against a range of standards, rules and requirements
    - evidence of capability and capacity challenges, particularly for smaller councils
    - evidence of affordability issues in some places
    - inadequate system oversight and connections between key parts of the system
    - variable asset management practices, and a lack of good asset information, are affecting the efficiency and effectiveness of three waters infrastructure and services
    - existing reporting obligations do not provide consumers and other interested stakeholders with meaningful information on the delivery and performance of three waters services in a way that appropriately promotes transparency, accountability and performance improvement over time.

3. Government also identified that the local government sector was facing funding pressures and an increasingly challenging operating environment relating to three waters infrastructure, associated with:
    - increasing demand for three waters services in high-growth areas, often with capacity constraints
    - declining rating bases, or small tourism centres with high seasonal demand
    - the scale and cost of renewing ageing infrastructure
    - community expectations and regulatory requirements relating to water quality, treatment and management, and national directions on fresh and coastal water quality
    - responding to climate change adaptation and infrastructure resilience issues
    - the operation and restoration of three waters infrastructure following emergencies.

Outcomes Sought

4. On the back of the Review, Government embarked on reform of the three waters system with the following outcomes sought:
    - existing three waters assets and services remain in public ownership, and the system will incorporate safeguards to protect public ownership of this essential infrastructure, both now and in the future
    - a sustainable three waters system that operates in the long-term interests of consumers, communities, and tangata whenua

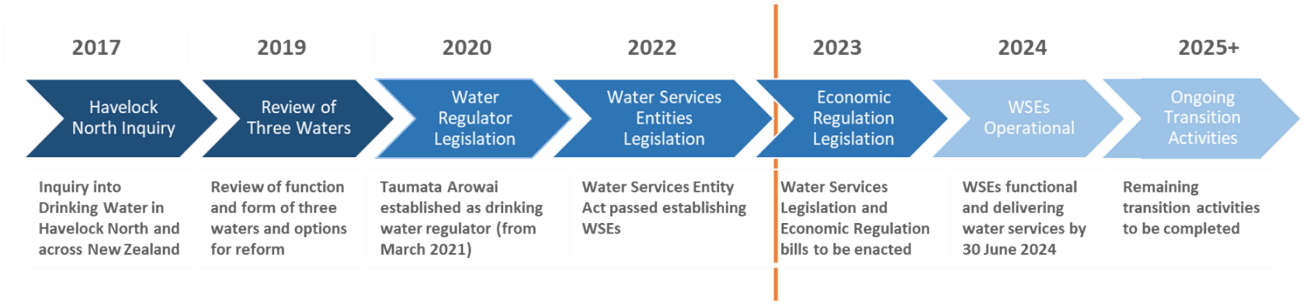
- drinking water that is safe, acceptable and reliable
- environmental performance of wastewater and stormwater realises the aspirations of communities in which they are situated, including tangata whenua
- three waters services are delivered in a way that is efficient, effective, resilient and accountable, with transparent information about performance, and prices consumers can afford
- regulatory stewardship of the three waters system is fit for purpose and provides assurance that these outcomes are being achieved and safeguarded.

Reform Pillars

5. The Government's reform package includes the following key elements:
    - establishment of a sole, stand-alone drinking water regulator
    - establishment of four super-regional water services entities to deliver three waters services
    - establishment of a water economic regulator to regulate prices for water services and protect consumer interests

Progress to Date

6. Government continues to make steady progress on its reform programme.



7. Taumata Arowai, the independent drinking water regulator, was established in 2020 under the Water Services Act and became operational in March 2021. A number of national regulations for drinking water have been implemented and more are pending.

8. The next major milestone was the enactment of legislation to establish the four Water Services Entities in December 2022. (The Discussion section below summarises the key changes brought about through this legislation and implications for Council.)

9. The next raft of legislative changes to support three waters reforms were introduced to the House in December 2022 (refer to **Reports 23-15** and **23-16** on this agenda).

WATER SERVICES ENTITIES BILL

10. In June 2022, Government introduced the Water Services Entities Bill to the House outlining the governance and accountability structures and processes for the four Water Services Entities (WSEs) and the arrangements for transitioning staff, assets and resources from councils to the new WSEs.

11. Council made a submission on the Bill (see attachment) and presented in person to the Select Committee about:
    - implications for communities of the proposed governance model which would result in less accountability and loss of local voice
    - loss of economies of scope (with increased net costs of remaining Council services) and the need to consider the total costs to communities of delivery of all services from water to roading to regulation etc
    - potential misalignment of infrastructure investment with local planning
    - concerns around the potential for super-regional delivery of water services to undermine local efforts around sustainable procurement (that achieves wider positive social, cultural, environmental and economic benefits)
    - the region's ability to deliver on community wellbeing more generally
    - the arrangements for the transition.

12. The Finance and Expenditure Select Committee considered 88,383 submissions and made approximately 130 amendments to the Bill before it was enacted on 14 December 2022.

13. The following section summarises the critical parts of the legislation and the implications.

WATER SERVICES ENTITIES ACT 2022

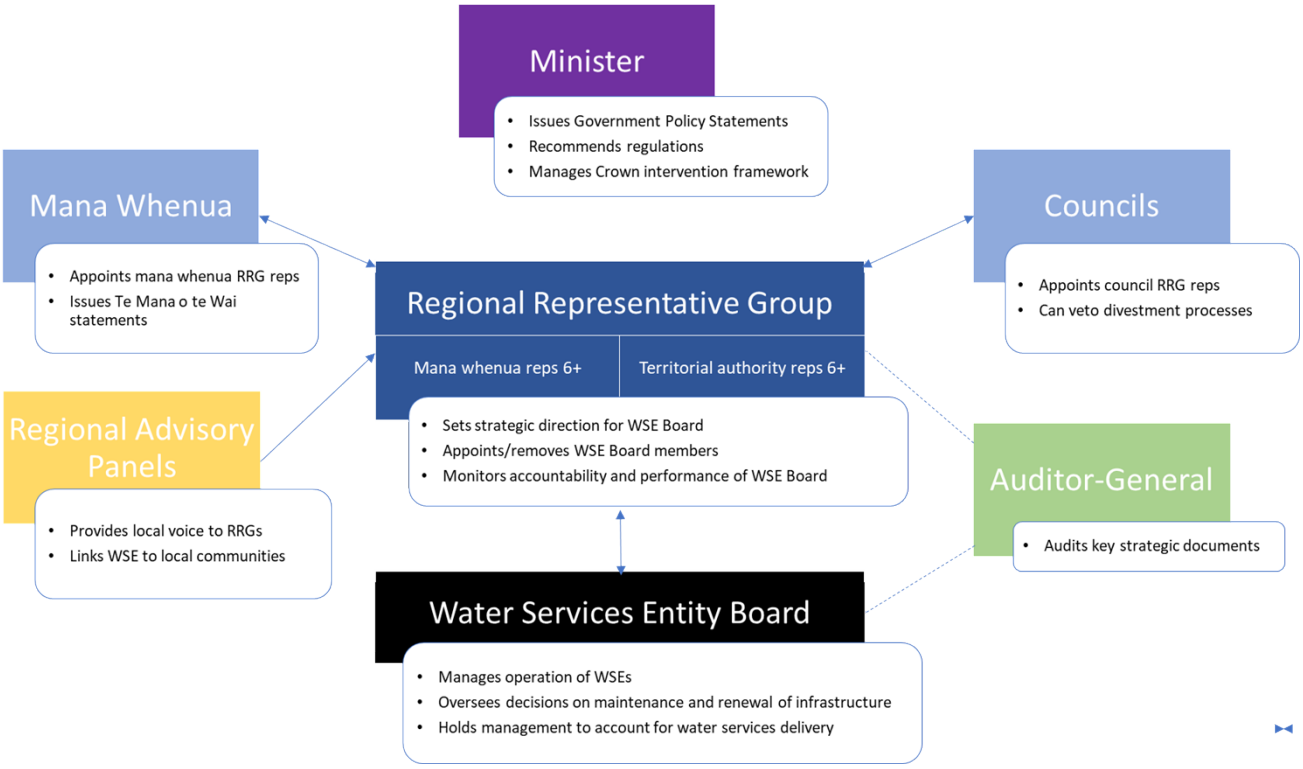
Purpose and Principles

14. 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 and planning processes
    - operate in accordance with best commercial and business practices
    - act in the best interests of present and future consumers and communities
    - deliver water services in a sustainable and resilient manner that seeks to mitigate the effects of climate change and natural hazards and enable climate change adaptation.

15. The WSE operational principles include being open and transparent, partnering early with Māori and councils, and sharing expertise and capability with other WSEs. The Select Committee made a number of additions that have been adopted in the Act including:
    - ensure employment and procurement processes have regard to the areas where services are delivered and the capability in and understanding of local cultural and environmental factors
    - take an integrated catchment approach to delivering water services and risks and hazards.

Accountability Arrangements

16. The diagram below illustrates the roles of those involved in water services, the relationships between them and the lines of accountability. The text that follows provides further detail.



17. Each WSE will have a two-tier governance structure comprising of a regional representative group (RRG) and an independent, corporate governance board.

Regional Representative Groups

18. An RRG consists of equal numbers of mana whenua and territorial authority representatives from within the entity's service area. There is a minimum of 12 members and the maximum number will be determined in the constitution of each WSE.

19. An RRG has a number of responsibilities and functions:
    - preparing a Statement of Strategic Performance Expectations stating the RRG's objectives and priorities for water services and guiding the decisions of a WSE Board
    - approving major transactions of a WSE where an asset proposed to be acquired or disposed of is more than 25% of the value of the WSE's assets
    - establishing a Board Appointment Committee to appoint and remove Board members and set remuneration policies
    - monitoring the performance of a WSE Board in relation to the Statement of Strategic Performance Expectations
    - representing the views of local communities.

Regional Advisory Panels

20. An RRG can choose to establish one or more Regional Advisory Panels (RAPs) representing specific geographic areas. RAPs would consist of equal numbers of mana whenua and territorial authority representatives.

21. The purpose of the RAPs is to advise the RRG on the content of strategic documents such as the RRG's Statement of Strategic Performance Expectation, and the WSE's Asset Management Plan and Funding and Pricing Plan. An RRG must consider the views of RAPs about the strategic direction of the WSE. The RAPs would provide for more direct local voice and support stronger links back to communities that would support WSE engagement with communities.

Water Services Entities Boards

22. 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. The Act now also includes requirements for a board to have expertise in:
    - network infrastructure industries
    - public health
    - the environment
    - perspectives of consumers and communities
    - perspectives of local government.

23. The Boards will oversee the operational management of WSEs with a focus on the maintenance, renewal, and development of water infrastructure.

24. The Boards 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).

25. The Boards will also prepare asset management plans, funding and pricing plans and infrastructure strategies. They are 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.

The Minister

26. The Minister (yet to be determined which one) will set the over-arching direction for all WSEs through a Government Policy Statement on Water Services. They will also have the powers to recommend the Governor-General make regulations on a wide range of matters – anything that is necessary to give full effect to the Act.

27. There is a Crown intervention framework in the Act outlining varying degrees of intervention powers the Minister can wield when they deem there are significant performance matters that need addressing. These range from observation through to taking over the management of a WSE.

WSE Constitutions

28. Each WSE will have a constitution that 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 a WSE board.

29. 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.

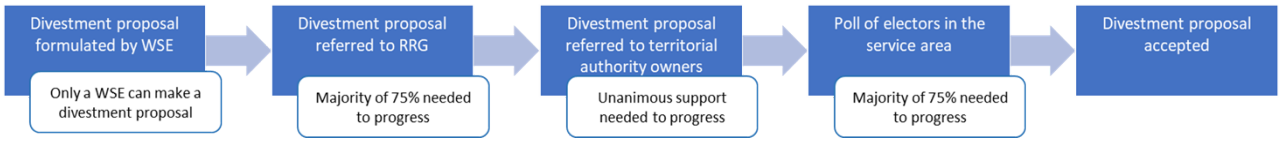
30. The first constitution for WSEs will be set out in regulations by the Minister. RRGs can replace the constitution at any time. Any replacement needs to be approved by the Minister.

Ownership

31. 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.

32. It is important to note that three waters assets and liabilities will transfer to the new WSEs and will be owned and managed by these entities. Councils will own the entities and be able to exert influence through:
    - the appointment of the territorial authority representatives on the RRGs and RAPs; and
    - the right to veto divestment decisions.

33. Water services and significant water infrastructure would be more difficult to privatise under a divestment proposal than they are right now.



34. 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. '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.

Tangata Whenua / Māori Rights and Interests

35. There are a number of elements in the Act to protect and promote tangata whenua / Māori rights and interests.

36. A WSE must give effect to the principles of Te Tiriti o Waitangi, to any Treaty settlement obligations related to water services, and to Te Mana o te Wai in carrying out all of its duties.

37. Mana whenua can make a Te Mana o te Wai Statement for water services and the WSE Board must respond within two years with a plan for how it intends to give effect to it.

38. RRGs are co-governance bodies with equal numbers of mana whenua representatives and territorial authority representatives and a role in setting the strategic direction for WSEs.

39. A WSE Board as a collective must have knowledge and expertise on Te Tiriti o Waitangi, and perspectives of mana whenua, mātauranga, tikanga and te ao Māori.

40. More generally, a WSE's operating principles state that a WSE must partner and engage early and meaningfully with Māori to give effect to Treaty settlement obligations and Te Mana o te Wai and to understand, support and enable the exercise of mātauranga, tikanga and kaitiakitanga. The staff of a WSE as a collective must have the appropriate knowledge and expertise to deliver on these principles.

Engagement with Communities

41. 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.

42. 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.

43. A WSE must engage with its consumers and communities on its asset management plan, funding and pricing plan, and infrastructure strategy.

TRANSITION ARRANGEMENTS

44. The DIA has established a Three Waters National Transition Unit (NTU) to manage the transition of assets, liabilities and people to the WSEs.

45. The Act includes a number of transitional provisions related to the period before 1 July 2024. The transition is an exercise of significant scale. It involves disaggregation of three waters activities from existing council functions where they are firmly embedded.

46. It is important to note that the transition is a case of 'building the plan while flying it' as there is limited precedent in modern-day New Zealand for a change of this scale and scope to water service delivery.

47. The critical elements of transition from the Act are listed below.

Asset and Liabilities

48. The establishment 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.

49. The Chief Executive of the Department of Internal Affairs (DIA) must 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.

50. Local authorities must comply with reasonable requests from DIA for information and knowledge held by staff during the establishment period.

DIA Oversight

51. The DIA will have oversight of council decisions about, or that may impact on, the delivery of water services. This includes Long Term Plans, Annual Plans other relevant policies. It also includes contracting, purchase or disposal of assets, and borrowing and service contracts that extend beyond a date specified by the Chief Executive of DIA.

52. During the establishment period, councils must provide DIA with information about an intended decision. The Chief Executive of DIA may review any decision made during the establishment period.

53. 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.

Staffing

54. The Chief Executive of DIA must review whether an employee primarily undertakes functions that will be transferred from councils to the new entities (more than 50%) to identify those staff who will transfer to the WSEs.

55. Three waters staff who primarily undertake three waters functions (excluding senior managers) have a "legislated job guarantee" and will receive offer(s) of employment similar in nature, terms and conditions and commuting distance to their current role.

56. Senior managers will enter into a negotiation process with NTU around roles within the WSE.

57. The WSE establishment Chief Executives are required to notify each employee who is being offered a position within the entity, including terms and conditions, before the establishment date of 1 July 2024.

58. Collective bargaining can be completed before the establishment date for new collective agreements that come into force on that date.

CHANGES FROM SUBMISSION PROCESS

59. As a result of the legislative process, there have been a number of changes that may address some of the concerns that Council raised in its submission.

Representation and Local Voice

60. There is no upper limit on the number of members on an RRG. This provides for wider representation across an entity of both mana whenua and territorial authorities. The inaugural model constitution for a WSE (being prepared by the Minister) will initially cap numbers at 14. However, an RRG can make amendments to its constitution to change this with the approval of the Minister.

61. The constitution of a WSE must include a procedure for ensuring that the territorial authority representatives on an RRG equitably and reasonably represent the range of rural, provincial and metropolitan councils.

62. The role of the RAPs has been strengthened allowing a more formalised pathway for local community voice on strategic direction-setting. The RRG must seek the advice of RAPs on its Statement of Strategic Performance Expectations and the Asset Management Plans and Funding and Pricing Plans of a WSE.

63. The competencies of WSE Boards as collectives have been broadened to include perspectives of communities, consumers and local government.

64. There is a requirement for Board meetings to be public and all parts of WSE are subject to the Local Government Official Information and Meetings Act.

Integration with Council

65. There are new provisions in the Act that create stronger alignment of WSEs with council processes and obligations.

66. Of critical note is the added objective of a WSE to support and enable the planning process reflecting the role of councils as 'plan-makers' and WSEs as 'plan-takers'. Councils will continue to lead regional planning and WSEs will give effect to their plans.

67. There is better alignment of timeframes with council planning obligations. For instance, the Statement of Strategic Performance Expectations now covers a ten-year period to align with the timeframe for a Long Term Plan. The Statement of Intent of a WSE board now covers ten years with the first three years being in detail so it also aligns with council Long Term Plan content and processes.

68. There are now specific requirements to engage with territorial authorities on preparation of Asset Management Plans, Funding and Financing Plans, and Infrastructure Strategies.

69. There is a requirement in the operating principles for WSEs to take a 'whole-of-catchment' approach to water services delivery to avoid siloed delivery and ensure better integration with councils and other infrastructure agencies. This is particularly critical for stormwater.

Community Wellbeing

70. Climate change adaptation is now an objective of a WSE alongside mitigating the effects of climate change and natural hazards.

71. The operating principles of WSEs now require a WSE to consider local communities in decisions on procurement. The Select Committee recognised the value of socially responsible procurement intention and wanted to create a balance between entities engaging local contractors and employees while also being able to deliver services efficiently through arrangements they choose.

STRATEGIC SHIFTS

72. The three waters reforms represent some critical shifts in water services delivery (and more broadly when wider reform programmes of Government are considered alongside this):
    - centralisation of decision-making away from local communities
    - drive for efficiency and economies of scale potentially at the expense of bespoke local arrangements
    - experts as decision-makers
    - changing democracy and power-sharing with tangata whenua / Māori through co-governance.

ASSESSMENT of SIGNIFICANCE - AROTAKENGA o NGĀ HIRANGA

Consideration of consistency with and impact on the Regional Land Transport Plan and its implementation
Overall Process: **High** Significance
This Report: **High** Significance

Impacts on Council's delivery of its Financial Strategy and Long Term Plan
Overall Process: **High** Significance
This Report: **High** 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

73. This report is part of a process to arrive at a decision that will/may be of **High** level in accordance with the Council's Significance and Engagement Policy

74. The three waters reforms represent a transformational change in the delivery of water services. Concerns remain around:
    - loss of local voice – (the legislative process has mitigated some of these however not completely ameliorated them)
    - impacts on communities in terms of levels of service and affordability for households and businesses of water services and the administrative costs of the new WSE
    - loss of economies of scope for Council in delivering remaining (non-three waters) services and how the disaggregation of water services will impact on Council's efficiency and financial management.

TANGATA WHENUA/MĀORI ENGAGEMENT - TŪTAKITANGA TANGATA WHENUA

75. The three waters reform programme is being led by the DIA on behalf of government. Tangata whenua are engaging directly with Government on the policy aspects of the reforms through iwi channels.

COMMUNITY ENGAGEMENT - TŪTAKITANGA HAPORI

76. The three waters reform programme is being led by the DIA on behalf of government. To date, the level of community engagement has been very low and only through the Three Waters website.

77. The DIA is about to employ establishment Chief Executives for the four WSEs and a priority for them will be to start conversations directly with communities, including to explain the reforms and the transition process.

78. When Council has a clearer picture of the impacts of the reforms for Te Tairāwhiti and delivery of remaining Council services, we will be able to share this with the community through our own engagement process. We have been waiting for the second tranche of Bills to provide a complete picture of the proposed new system as a basis for our assessment of impacts.

NEXT STEPS - NGĀ MAHI E WHAI AKE

Date	Action/Milestone	Comments
15 February 2023	Workshop with Council on three waters reforms	
May 2023	Preliminary assessment of impact of reforms on Te Tairawhiti and Council	
September 2023	Plan for addressing impact of reforms on Council	
Ongoing	Reports to Council on elements of the transition process and emerging risks and issues (as they arise)	

ATTACHMENTS - NGĀ TĀPIRITANGA

1. Attachment 1 - SUBMISSION Gisborne District Council Water Service Bill FINAL [**23-14.1** - 8 pages]

Committee Secretariat
Finance and Expenditure Committee
fe@parliament.govt.nz

Te Kaunihera o Te Tairāwhiti
GISBORNE
DISTRICT COUNCIL

22 July 2022

Submission on Water Services Entities Bill 1

1. Thank you for the opportunity to submit on the Water Services Entities Bill (1).
2. We acknowledge Government for taking up the challenge of addressing the significant infrastructure issues apparent across the local government sector.
3. The need for safe, reliable, and affordable water services that support good health and sustainable environmental outcomes are outcomes we can all agree with. We support these outcomes along with partnering with our mana whenua to deliver these outcomes.
4. We wish to present our submission in person to the Select Committee.

Snapshot of Te Tairāwhiti

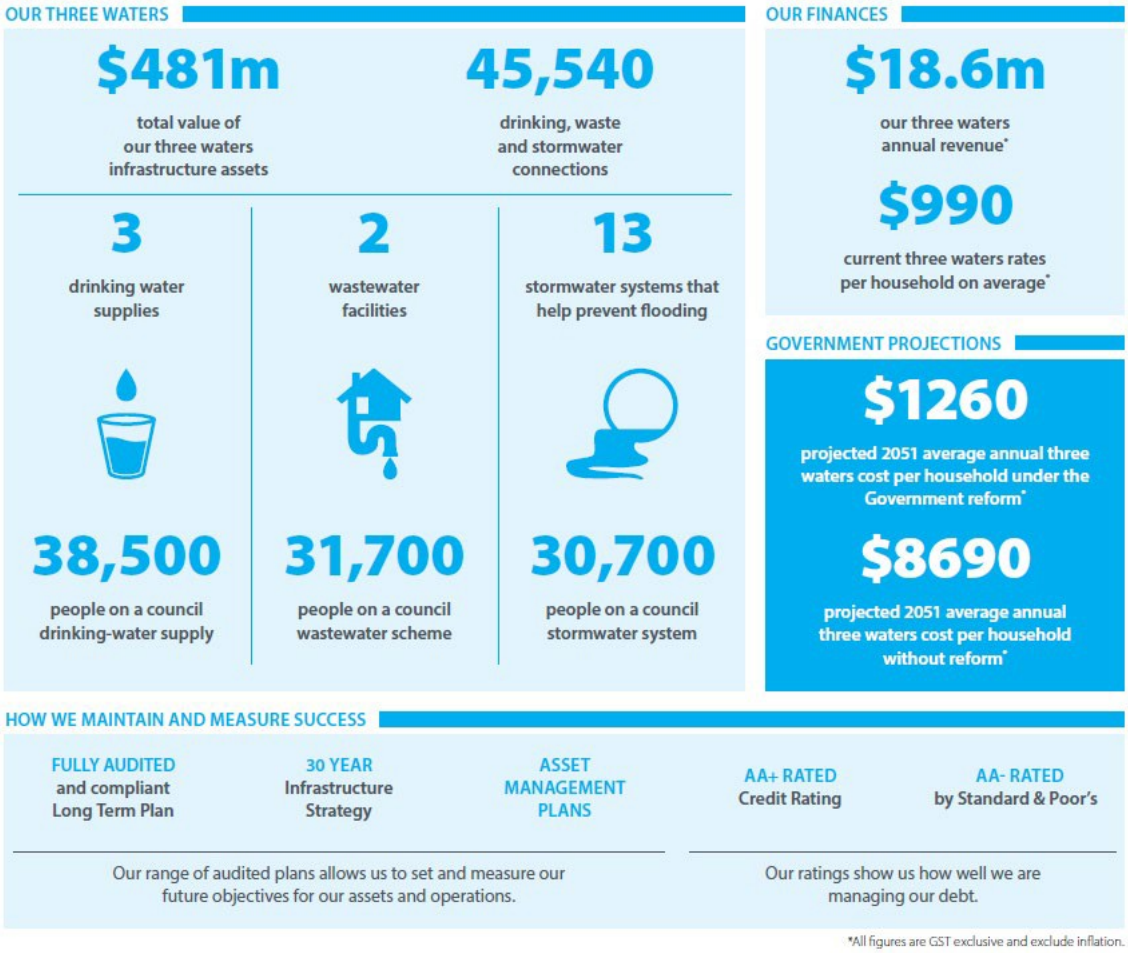
5. Te Tairāwhiti region comprises approximately 51,500 people. We have a relatively young population with 39% below the age of 25 years of age. We also have a high proportion of our population over the age of 64 years of age. The upshot of this is that we have a smaller economically active population than other regions with more financial pressure on those of working age to over cost of services such as three waters.
6. Our four iwi of Tairāwhiti are Ngāti Porou, Rongowhakaata, Te Aitanga a Māhaki and Ngāi Tāmanuhiri and 53% of our people identify as Māori. There are 71 marae across the region with 68% of these in the rural areas well north of Gisborne city. Our predominantly rural marae are critically important and have complex needs in terms of access to three waters services that are financially sustainable.
7. We rank 60 out of 67 territorial authorities on the NZ Deprivation index (as at January 2022) and have the highest level of deprivation of any region in NZ, with two thirds of the population (65%) living in deciles 8-10. Deprivation is more pronounced by ethnicity with 77% of Māori in Te Tairāwhiti living within deciles 8-10. A high regional deprivation level creates challenges for service providers in striking a balance between meeting needs for services and the affordability of those services.
8. We have a relatively low median household income of $66,000 per annum compared with the national median of $80,055. There is considerable variability in median income between areas within the region with Māori living on the East Cape having a median income of $49,196. It is important to note that 26% of Tairāwhiti households have an income of less than $30,000 per annum. Another 19% have an income of between $30,000 and $50,000. The affordability of service provision for individual households continues to be a challenge in Te Tairāwhiti.

9. We have a shortage of at least 400 homes in Te Tairāwhiti currently with that projected to rise to nearly 3,000 by 2050. The median house price in Gisborne rose 40% to $570,000 in the year to June 2021, outpacing the nationwide increases. By December 2021 it sat at $695,000. There is a flow-on effect to the rental market with the average cost of a rental house sitting around $575 per week currently. High costs of living for our community compound issues of affordability.

10. While we are only 1% of the national population, our land area comprises 3% of New Zealand's national land area. There are 3,200 Māori Freehold Land units in Te Tairāwhiti covering 228,000 km^2 and representing 28% of total land area of land in the region. Developing Māori land for housing (papakāinga) and alternative productive uses will require access to services that are not currently provided, yet the benefits of doing so could be transformational for some communities.

11. Gisborne District Council is a unitary authority with both regional council and territorial authority functions and responsibilities.

12. The figure below provides a snapshot of our three waters assets.



Benefits of the reforms

13. We acknowledge that safe, reliable, and affordable water services that support good health and environmental sustainability are critical for our people. Partnering with mana whenua to deliver these outcomes is very much supported.

14. The promise of the reforms to improve financial affordability and sustainability in the long term, if achievable, is a significant benefit. Infrastructure and service affordability for all sectors of our community is a challenge we have been grappling with for many years and a major concern for Te Tairāwhiti. We acknowledge that political pressure on councils often leads to prioritising lower rates in the short term at the expense of investment in infrastructure and services where the benefits manifest more in the future.

15. We are hopeful that the reforms will enable the development of a high calibre workforce of technical experts in water services and reduce the need for competition between councils, government and the private sector for skilled labour.

16. In summary, we recognise the benefits of the reforms and support, in principle, the need for change.

17. The remainder of our submission suggests specific amendments to the Bill that would strengthen the reform outcomes, notably around:
    - governance and accountability to local communities
    - functional integration
    - existing co-governance arrangements
    - transition arrangements
    - affordability and costs of arrangements.

Governance and accountability

18. **Privatisation**: The Bill offers protection from privatisation in establishing the WSEs as body corporates with territorial authority shareholdings. This protects the long-term investment made by different communities into three waters assets.

19. **Representation**: We remain concerned about the loss of local voice in the proposed governance arrangements of the WSEs. The Bill has limited mechanisms for local voice in water services delivery with representation spread across massive geographical areas and diverse communities of interest.

20. There are 21 councils in WSE C, at least 31 iwi and more than 250 hapū. Each council, iwi and hapū represents a range of interests and community expectations. Te Tairāwhiti has a unique demography and set of issues (as outlined in the snapshot section above) and there is no guarantee that communities of Te Tairāwhiti will be well-served by the structures and processes proposed. The Bill should contain mechanisms that ensure a diversity of representation on the RRGs reflecting the diversity of councils, iwi and hapū.

21. **Accountability**: The Regional Advisory Panels may provide opportunities for local voice feeding into RRGs, however, there is no accountability back to these groups. The consumer fora and consumer stocktakes may provide a mechanism for feedback to WSEs but, again, this is one way with no accountability mechanism.

22. **Community wellbeing**: There is a lack of explicit focus in the objectives, functions, and principles on the fact that the primary role of WSEs will be to meet community needs for water services and that community wellbeing of all people is a paramount driver of WSE activity.

23. In line with community wellbeing, we also have concerns around the way that services are delivered. Council and central government have invested significantly over the past five years in sustainable procurement and ensuring that the way services are delivered has wider positive social, cultural, environmental and economic benefits beyond the development of infrastructure and pure financial bottom lines. Through local procurement strategies, outcomes such as job creation, resource recovery initiatives and local business growth have been an integral part of infrastructure programmes with positive flow-on effects for communities. We are concerned that this effort will be lost with a super-regional delivery model.

24. **Affordability**: The importance of affordability in provision of water services is also missing from the objective and principles of WSEs, despite Government's messaging that affordability is a fundamental driver of reform. Financial sustainability referred to in section 11 is about the ability of the system to sustain itself financially and is not the same thing as affordability for communities.

25. **Investing to rebalance inequity**: Aggregation of services to a super-regional (entity) level has the potential to further exacerbate inequities in access to services and affordability for the most vulnerable people in our community. As a region with one of the highest deprivation rankings, many of our people do not have access to adequate three waters services currently and are more vulnerable to changes that raise costs of living (such as increases in rates). Without adequate representation how will we ensure that water services are delivered at a level that all of our people can afford and that do not exacerbate current inequities in access to services?

26. We are also concerned that investment and prioritisation decisions will be based on population where smaller and more isolated communities would not be well-serviced. 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 additional targeted investment in our roads to bring them to a first world standard.

27. **Carbon zero**: There is a focus in the objectives, functions, and principles of WSEs on resilience, which we support. However, there is no requirement for WSEs to consider government's wider policy agenda around climate change mitigation and moving to a carbon zero economy. This is a missed opportunity and may put WSEs out of alignment with government and council direction.

Recommended amendments (governance and accountability)

That the Select Committee:

- Amend section 32 requiring territorial representatives on RRGs to be representative of the different mix of urban, provincial and rural territorial authorities.
- Amend part 4 (accountability) to require RRGs to seek advice from RAPs when developing a Statement of Strategic and Performance Expectations, and when commenting on the draft accountability documents of the WSE Board.
- Amend sections 11 to 13 to add community wellbeing, equity, affordability, and contributing to a carbon zero economy to the objectives, functions and principles of the WSEs.

- Amend section 151 to require WSE boards when preparing funding and pricing plans to consider affordability for communities and how their approach will address inequity.
- Amend section 92 to add that a WSE constitution may stipulate appropriate engagement that would apply to the consumer fora, consumer stocktake, and public engagement on accountability documents.
- Note our support for retaining provisions to engage councils directly in the development of the first constitution to be set out in regulations.

Functional integration

28. It is unclear how the three waters reforms will interface with the rest of the government's reform programme impacting on local government, specifically the resource management reforms and the future for local government.

29. The Bill is quiet on how the 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
    - place-making
    - freshwater planning particularly water allocation and security
    - climate change and resilience planning.

30. Post-transition, councils will still need to carry out strategic planning to inform decisions around growth, land use regulations and investment in other infrastructure such as roads, community facilities and open spaces. It is important to keep the requirements in Schedule 3 to engage with councils in the preparation of accountability documents. We support this.

31. There is extensive opportunity for duplication of effort around the areas of shared interest such as growth planning and resilience planning. This will be exacerbated if there is no clarity around functions and if the allocation of functions does not meet the needs of both parties. It is important to minimise duplication of effort between WSEs and councils so that any efficiency gains from water services centralisation are not lost by mirroring functions.

32. We have significant concerns around how Te Tairāwhiti will be able to meet its obligations under the National Policy Statement for Urban Development to provide sufficient development capacity for residential and business purposes. Our Tairāwhiti Regional Housing Strategy 2022 identifies a current shortage of around 400 houses across the region with that number projected to rise to nearly 3,000 by 2050. It further outlines how infrastructure capacity is a key constraint in housing development already. Our concerns are around how the investment prioritisation processes of WSEs will dovetail with local (and national) needs for infrastructure to increase housing supply and how all of the priorities across an entity will be able to be delivered on to meet wider government requirements like those in the NPS.

33. As a unitary authority, we have first-hand experience of the benefits of providing regional and territorial authority functions as a single entity – that it promotes integrated thinking across inter- related functions as well as streamlining effort (reducing duplication between neighbouring authorities). We want to highlight the unique advantages that a unitary authority may have to potentially deliver on and support functional integration.

Recommendations (functional integrity)

That the Select Committee:

- Look closely at the opportunities that the pending resource management reforms offer to achieve functional integration through a move to a unitary authority model of delivery, which would provide for more efficient engagement with WSEs and around their accountability documents – asset management plans, funding and pricing plans and infrastructure strategies.
- Note that the second Bill due out in 2022, needs to provide clarity around functions and lead responsibilities.

Existing local co-governance arrangements

34. We have a number of local co-governance and relationship agreements with iwi, hapū and Māori land block trusts that impact on three waters activities. Some of these agreements relate to land that is used for multiple purposes and either has three waters assets on it or is part of stormwater management systems or protecting water supply sources and pipelines.

35. Some of these are part of Te Tiriti o Waitangi settlements or conditions of resource consent. Some of them are not. We consider them to be part of giving effect to the principles of Te Tiriti and how we want to work with Māori now and into the future.

36. It is not a matter of handing over relationships to a new WSE as there are often complex legal and commercial issues with this and/or Council still has other interests beyond three waters in the land and assets.

Recommended amendments (existing local co-governance arrangements)

That the Select Committee:

- Amend section 4 to require that any existing co-governance arrangements are protected and continue to have effect under the new arrangements, even where they do not have a foundation in a specific Te Tiriti settlement or other statutory mechanism but the council and mana whenua consider their intent is to give effect to Te Tiriti.
- Amend schedule 1 to provide some flexibility around the transfer of assets and liabilities that recognises the multi-functionality of some land and assets and a mechanism for negotiation with councils.

Transition arrangements (Schedule 1)

37. **Co-design**: 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.

38. 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.

39. Our preferred approach is one where the Chief Executives of the Department, the NTU, and councils within an entity work with the establishment CE to prepare an establishment plan that enables all parties to meet their responsibilities during and after the transition.

40. **Transition powers**: We are concerned about some of the transition powers granted to the Department during the establishment period.

41. We do not think it reasonable to grant the Department the powers to compel councils to release staff to be seconded to WSEs to support transition activities. Councils must be able to ensure business continuity. We simply do not have excess capacity and are currently understaffed.

42. Council has already complied with some of these requests from the Department with key staff being represented on national and technical reference groups. We agreed to this on the basis that Council would have an opportunity to feed insights and expertise of the wider staff through these representatives into the working groups. However, several of these working groups have restricted their members from sharing information with their parent councils. So, there has been no benefit in this arrangement for council.

43. We are concerned about the timeliness of decision review processes under Schedule 1, Sub-part 4. There is no timeframe on when a decision on a review is required.

44. **Staff transition**: There are real concerns of council around which staff will be transferring to the new WSEs. It is common in smaller councils particularly for staff to work across multiple activities ie across all infrastructure functions from roads to three waters to flood protection.

45. We understand that decisions on whether these cross-team staff work 'primarily' in three waters will be determined on a case-by-case basis, which is appropriate. What we take issue with is that the establishment Chief Executive would make these decisions independent of Chief Executives of councils. Cabinet has already stated that its intentions are to not leave councils bereft of staff and unable to deliver remaining services. These decisions on borderline cases need to be made with the Chief Executives of councils.

46. **Investment during transition**: There are areas where investment planning, pricing and funding is uncertain at this point. There must be a process to integrate the first 3-5 years of Long Term Plan investment planning into WSE investment plans for continuity of service until the entity can deliver its own infrastructure strategy.

Recommended amendments (transition arrangements)

That the Select Committee:

- Amend Schedule 1, Clause 7 (2) to require engagement with the Chief Executives of the councils within the entity on the establishment plan.
- Amend Schedule 1, Clause 11 (2) to state that a request will not be considered reasonable if it impacts on the ability of a council to meet its obligations.
- Amend Sub-part 4, Clause 24 to impose timeframes on decision reviews and notifications.

Affordability and costs of arrangements

47. Affordability for our communities is of utmost concern to council given our socio-demographic profile – the total sum cost of delivering **all** services (roads, regulations, three waters, parks etc) to communities needs to be considered as part of the financial impact of the reforms – regardless of who is delivering the services, the costs will fall on households and businesses.

48. Removing three waters from council delivery will not necessarily see a drop in the amount of rates funding collected annually – there is a loss of economies of scope in the activities that will remain with councils after the transition. There are likely to be limited savings for ratepayers in the short to medium term.

49. We are very eager to see how the second Bill will address how funding and pricing decisions will be made, and the issue of affordability. This includes making sure small or isolated communities do not pay disproportionately more.

Recommendation (affordability and costs of arrangements)

That the Select Committee:

- Request that Government reassess the economics of the reforms in light of overall affordability for communities ie the costs to communities of all services once other rates and fees are included and the overall scale of the gains to be made. That this revaluation is shared with councils and the public.

Thank you

50. Once again we thank the Select Committee for the opportunity to provide a uniquely Tairāwhiti perspective on the Bill.

51. We look forward to presenting our thoughts to you in person.

Mauriora

Nā Nedine Thatcher-Swann
Chief Executive

12. Public Excluded Business

RESOLUTION TO EXCLUDE THE PUBLIC

Section 48, LOCAL GOVERNMENT OFFICIAL INFORMATION and MEETINGS ACT 1987

That:

1. **The public be excluded from the following part of the proceedings of this meeting, namely:**

   Confirmation of confidential Minutes

   Item 4.1 Confirmation of confidential Minutes 15 December 2022

   This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information & Meetings Act 1987 and the particular interest or interests protected by section 6 or section 7 of that Act which would be prejudiced by the holding of the whole of the relevant part of the proceedings of the meeting in public are as follows:

	7(1)(a)	To prejudice the maintenance of the law, including the prevention, investigation and detection of offences, and the right to a fair trial.
Item 4.1		
	7(2)(i)	Enable any Council holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).