

22 July 2022

Finance and Expenditure Committee
Parliament Buildings
Wellington

Dear Members of the Finance and Expenditure Committee

Horowhenua District Council (the Council) thanks the Finance and Expenditure Committee (the Committee) for the opportunity to submit on the Water Services Entities Bill (the Bill).

Council position

In October 2021, Council provided honest and constructive feedback to the Minister of Local Government about the then proposed direction of the Three Waters Reform. The Council supports reform of the three waters sector but did not support that reform proposal. Council raised a number of issues and suggestions for improvement. As the many of the fundamental matters we raised have not been addressed, Council opposes this Bill.

It is Council's position that:

- *Council considers the sequencing of three waters reforms ahead of finalisation of the Government's own concurrent future of local government review is ill-considered and inappropriate;*

The Three Waters Reform will have a significant impact on the future functions of local government. Council considers it is appropriate to proceed with the Future of Local Government discussion ahead of the Three Waters Reform. The Future of Local Government reform should provide the over-arching direction for the responsibilities and requirements for local government. This would clarify the activities to be delivered by local government, which could guide the future of water service delivery in Aotearoa New Zealand.

The Resource Management Reforms are also likely to have a significant impact on three waters service delivery, including regulation of the disposal of wastewater effluent and stormwater. The detailed requirements for Spatial Planning will also be important in setting direction for growth investment by the new water service entity.

- *There are other credible and workable models and approaches that should have, and could still, be explored (by Government or councils themselves) as an alternative to, or enhancement, to the current reform proposals;*

Council acknowledges that the reform proposals are well advanced and that Government is seeking feedback on a single model as the solution to the identified problems as well as an optimal mechanism to achieve desired Government outcomes. However, Council thinks the policy development was focused on the Scottish Water Model from an early stage, and not on what communities want to prioritise and support.

In the Horowhenua context, Council believes alternative options could offer similar advances while minimising the loss of local influence and accountability. Council recommends Government to consider alternative methods to deliver efficient three water services, for example through a Council Controlled Organisation that service multiple councils in a region or an expansion of the current alliance delivery model. In the Council's opinion, the issues of taking time to consult the

public and creating bespoke legislative clauses, identified in [DIA's information to support submissions](#), are not sufficient reasons to rule out this option.

- *Absence of community engagement*

The Council's October comments to the Minister represented an organisational and elected member perspective. While it took account of some community sentiment and views expressed to Council, we emphasise that the Horowhenua district community had not been formally engaged or consulted on the reforms. That reflected that Council had not been in a sufficiently informed position, nor did Council consider it appropriate, to 'sell' the Government reforms to the district's communities. Council said that before a meaningful community conversation could be had about the reforms, the fully formed final and detailed proposal, along with what opportunities, risks and trade-offs it presents, and ultimately what decision (if any) Council are being asked to make or implement, needed to be presented.

That did not happen. Information has not been provided to adequately inform communities of the detail and consequences of the proposed reform. Nor has it enabled the community to discuss the proposals with those designing and advocating for them. While anyone is able to submit on this Bill it is providing feedback on a proposal not fully explained and is not a forum for early discussion with those who designed and advocate for the proposed reform.

The introduction to the Bill states:

"Water services are an essential building block for communities. Public health and well-being, better environmental outcomes, economic growth and job creation, housing and urban development, climate change, resilience to natural hazards, and the rights and interests of iwi and Māori all depend on better outcomes for those services."

The Council fully supports that comment. These are key issues our community faces and deals with. Further, it is disappointing that "partnering and engaging early and meaningfully with territorial authorities" has been relegated to it an Operating Principle of water entities (clause 13(f)) rather than a feature of the reform process itself.

It is paramount that the voices of the Horowhenua community are heard and responded to. The district's community has concerns around issues such as additional charges. Council needs assurance that the Horowhenua community has their concerns answered, feels well informed and understands the pros and cons of reform. Council wants our community to be engaged with for significant decision making for Three Waters infrastructure, at a minimum, to the level of community engagement currently carried out by Council.

The continued absence of such engagement on these "essential" services is a further reason the Council does not support the approach proposed.

Council stands by its earlier position that the Government should immediately pause the current reform programme to consider appropriate sequencing and allow for the investigation and development of other alternative more localised or regional collaborative or aggregated approaches to achieving better three waters outcomes.

Council recommends that the approach is changed and an enduring solution is sought through a genuine cross-party process. Many organisations, councils and communities want the three waters system to be reformed. There is genuine interest in working together to develop a solution for such an essential service. By listening to sentiment in the wider community and local government sector the Government would not be 'losing' by pausing. When it comes to matters such as the provision of a safe and reliable water supply, parties shouldn't be 'winners' or 'losers'.

It's our communities who lose through this approach. On one hand, communities face implementation of a system they have not had input into and do not support. On the other hand, the needed reform will be delayed if this legislation is repealed if there is a change of

Government. The three waters reform process purports to have community interests at heart, but that is not what is playing out.

By listening and holding further discussions and taking a cross-party approach, people would view that bold step as it should be seen – brave and the right thing to do. It is how we want our leaders to lead.

Council recognises that such a decision is not made by the Select Committee, however Council recommends that the Committee strongly recommends a cross-party solution be developed and that the Bill not proceed as proposed.

Select Committees are known as Parliament's workhorses, where Members of Parliament work together to improve legislation and delve into issues. There is a very real opportunity here to make a significant and positive difference to future of the three waters reform.

However, if the Bill is to proceed, Council supports and endorses the submissions by Local Government New Zealand (LGNZ), Taituara and Communities for Local Democracy. Council makes the following additional points and recommendations:

Part 1 - Preliminary Provisions

As above, Council does not support *clause 3 - Purpose* and opposes the establishment of 4 water services entities as proposed.

However Council does support any model being required to give effect to Te Tiriti o Waitangi/the Treaty of Waitangi and Te Mana o Te Wai as in clause 4.

Part 2 - Water Services Entities

- **Objectives**

Council supports the inclusion of clause 11(f) requiring water services to be delivered '*in a sustainable manner that seeks to mitigate the effects of climate change and natural hazards*' but recommend it go further and be required to be delivered in a manner that not only mitigates but '*supports or improves*' community resilience.

The Council recommends that a clause be added to require the water service entities to implement sustainable procurement practices throughout the supply chain including contributing to local employment and economic activity.

- **Functions of water entities**

The Council recommends that a new subclause 12(c) be added to clarify that this clause includes giving effect to providing for new and existing businesses as committed to in Spatial Plans and Long Term Plans.

Any reform of Three Water Services must, at the very least, guarantee the delivery of the LTP 2021-2041 adopted by the Horowhenua District Council in June 2021, and other associated plans and strategies, such as Council's 30 year Infrastructure Strategy, Asset Management Plans and Integrated Spatial Plan. This is what is required to meet the district's future growth and what its community expects to be delivered, and therefore these expectations must be met.

Managing Growth

Three Waters has been a focus for Horowhenua in Council's strategic planning, as the infrastructure is a key enabler for the district's ability to provide for a population growth projection of around 30,000 across the district over the next 20 years.

The Council is taking a proactive approach to planning for growth. At a regional level Council has been a key partner in the development of the Wellington Regional Growth Framework and the Manawatū-Whanganui Regional Spatial Plan.

Horowhenua is in the midst of an exciting transformation. The district is undergoing significant growth and it is essential that there is continued investment in its infrastructure. Levin in particular is experiencing significant growth pressures due to its proximity to the major centres of Wellington and Palmerston North and its availability and affordability for housing developments. The district is currently growing at a rate higher than the 95 percentile population growth rate factored into the Long Term Plan 2021-2041.

Council has provided \$231.7m in that Long Term Plan for enabling infrastructure investment across the housing development areas, with \$191m of that planned for three waters infrastructure. Key strategic three waters infrastructure planned within 10 years include:

- Alternative water supply for the growing population, as well as investigating sources of sustainable supplementary water supply for providing resilience and climate change mitigation.
- Levin Wastewater Treatment Plant and treated effluent disposal site which is locally known as The Pot (irrigated to forestry mixture of exotic and native trees).
- Full service water and wastewater reticulation upgrades to serve our growing settlements.

Alongside growth investment Council has invested significantly in its wastewater infrastructure with close to full irrigation of wastewater to land and for safe water supplies. This investment and ongoing renewal and maintenance has ensured continuity of service and wellbeing for our community.

Council has also worked hard to ensure that its three waters infrastructure and service activity be delivered in a way that recognises the role of iwi partners. This partnership approach has influenced Council's approach to wastewater treatment and delivery of safe water to the district's communities.

Council's Long Term Plan prioritised master planning for the Levin water supply and wastewater are finalised. Council want to ensure that a robust work programme is developed that meets current and future demand. Council also need certainty on ensuring its district will receive, at the very minimum, the same level and timing of current planned growth infrastructure.

This investment has the support of our community who we consulted during development of the Long Term Plan, and is needed to support the growth and future of our district. Therefore, we recommend that the functions of water services entities includes giving effect to providing for new and existing businesses as committed to in Spatial Plans and Long Term Plans.

- **Operating principles**

The Council welcomes the inclusion of clause 13 (f) '*partnering and engaging early and meaningfully with territorial authorities*'. In addition, Council suggests that the water service entities are required to follow consultation requirements with local communities and councils, similar to the requirements for local authorities in the Local Government Act 2002 (LGA). (Please see *Engagement* on page 6 for more).

- **Duty to provide funding and information**

Council recommends clause 14 be deleted as it is repeated in clause 114(1) and (2).

- **Shares in water services entities**

The Council does not support clause 16. The shareholding proposal does not reflect an equitable approach for communities, and as such Council does not support it. For example, Horowhenua District Council with 36,000 people gets 1 share, the same as the Chatham Islands with 700 people. Council cannot agree with such an allocation regarding our building block assets for our community.

- **Regional Representative Groups - Establishment and membership**

Council believes that the Eastern-Central Water Services Entity (formerly 'Entity C') will not be fully represented from a Council or an iwi perspective. The Regional Representative Groups may only consist of 12-14 representatives, and include equal numbers of territorial authority representatives and iwi representatives. That is, six or seven each. The Entity includes 21 Councils. Of those 14 or 15 will not be represented.

Allowing six or seven could be interpreted as a direction the Future of Local Government reform is heading, and that this is a 'post-amalgamation' scenario. There otherwise isn't sufficient justification for restricting representation to this extent. If this is the intent, Council again states that the reform should be paused and aligned with the Future of Local Government reform.

The proposed iwi representation must be revisited. Within the Horowhenua district alone, there are four iwi, two of whom are pre-settlement.

Horowhenua District Council has worked hard to build a partnership with local iwi including working through complex and difficult issues such as wastewater discharge arrangements. Council want to ensure its iwi partners continue to have a strong voice around that delivery and management of three waters in the Horowhenua as they currently do through direct contact with Council at a governance and officer level.

A one-size-fits-all approach is not appropriate, and Council would suggest bespoke arrangements are made for each water services entity, and serious consideration of addressing the unequal resourcing positions of pre-settlement iwi being asked to vie for places against post-settlement iwi.

Part 4 - Financial and accountability matters

- **GPS: Water Services**

Council supports LGNZ's recommendation to ensure central policy direction comes with greater central government investment. Any centralised control via a GPS needs to be followed by funding from the centre. Central government also needs to assist with assessing and funding investment needed to address historic degradation and inequalities.

- **Statement of Intent**

It is imperative that the establishment of the water services entities and the first Statement of Intent include the following:

- That Water Service Entities are required to plan for and deliver services in a manner that supports the delivery of the proposed regional Spatial Plans and District level Long Term Plans.
- That the Water Service Entities is required to provide an investment prioritisation framework.
- That there is a clear process for every council to influence the Statement of Intent for their water service provider, to ensure alignment of service delivery with their strategic priorities.
- An amendment to clause 145(3)(a) *'the forecast financial statements for each financial year in the period to which the statement of intent relates'* to add *'and a minimum underpinned quantity investment per annum in water infrastructure is specified for each region to ensure infrastructure is built to meet future demand.'*

- **Funding and Pricing Plan**

Council supports the requirement that the Board of a water services entity must provide a funding and pricing plan at least once every three years. Any thought of water services charges affordability needs careful consideration alongside rates relief offered by individual councils. Affordability includes making sure small or isolated communities don't pay disproportionately more.

Therefore the Council recommends the following:

That clause 151(2)(d) be inserted as follows:

“specify the entity’s approach to achieving affordability for consumers”

Council is pleased to see the requirement in Part 3 of Schedule 3 that the water services entities “*must*” engage with territorial authorities, consumers and communities on proposed funding and pricing plans.

Council recommends below that it be amended in this Bill requiring water services entities to *collaborate* rather than *consult* with Territorial Authorities so customers offered rates relief are also recognised by Water Service Entities.

Council is concerned that there is no visibility of the additional pricing and charging arrangements that will be included in the additional legislation, including that Council’s three waters borrowings will be repaid by central government. Council’s concerns are detailed under *Additional water services reform legislation* below.

Part 6 - Miscellaneous

- **Engagement**

Council set out the importance of the community voice in the introductory statements to this submission. Ongoing and meaningful engagement is vital if the water entities are to provide the benefits promised.

Council recommends that Subpart 3 – Engagement be moved into *Part 4 - Financial and accountability matters*. Engagement is too important to be labelled ‘miscellaneous’. Further, consultation requirements of the LGA are included in Part 6 – Planning, decision-making and accountability.

Council’s recommendation is consistent with this precedent.

Council is pleased to see clause 202 setting out the water services entities’ engagement requirements as a step in the right direction. However, the option in clause 202(2) to either ‘*consult on a proposal*’ or ‘*seek input during the formulation of a proposal, or feedback on a proposal, on an iterative basis*’ should be removed so all parts are required, making it consistent with clause 13(d) (f) to partner and meaningfully engage early with Māori, territorial authorities and their communities.

Council would welcome this recognition and protection of the public and local voices.

The requirement in clause 202(4)(c) that a water services entity “*must allow adequate time for engagement to occur and for territorial authority owners, and for consumers and communities to respond*” is pleasing to see and will need to be followed in good faith. Both councils and iwi have limited resources and duty to our communities to provide informed and considered responses. That includes the internal processes each has for considering and agreeing responses, which take time.

Council notes also the consultation requirements in sections 82 and 83 of the LGA, are requirements, not choices. The Council recommends water services entities be subject to at least the same

requirements. 'At least', as this Bill can reflect more modern engagement practices developed since 2002.

Additional water services reform legislation

While it has been stated that there is additional legislation to come transition arrangements, Council is concerned that pricing and charging arrangements are being split across different pieces of legislation, and that further powers, functions and responsibilities of water services entities are still to be identified.

This runs the risk of creating unnecessary complexity and possible confusion, for aspects of Statements of Intent, Funding and Pricing Plans, further pricing and charging arrangements and any additional powers, functions and responsibilities of the water services entities. As has been the case throughout this process councils and communities are not able to comment on the whole proposal.

For example there is significant concern among our rural community that they will be asked to contribute to water costs when they do not receive any services. Clarity is needed from a funding perspective about which members of the community are expected to pay for the cost of water and wastewater.

Industry and horticulture are heavy users of water networks in the Horowhenua – it is critical that clarity and certainty is provided to them. Businesses need detailed pricing and compliance information to enable informed investment decisions about their future.

Council notes the commitment to the principle of equity in charges for commercial versus residential Three Waters services, and expect there to be a consistent pricing approach within an entity, and between entities, and for industry to pay for what it uses. However, the information provided to date offers little information on how equity will be achieved.

While Council understands that, as stated in the July 2021 Cabinet papers, equity is a key principle and that the new entities will need different charging instruments to effectively and equitably charge customers across the network, further advice on this matter is not be available which makes it impossible to assess its implications.

Council is concerned about the potential for changes in charging structures for water and wastewater services to impact on business operations. Council's investment in wastewater treatment infrastructure is an example of providing long term certainty of level of service for businesses, ensuring that Horowhenua is a good place to do business. Council would like the new service delivery arrangements, and their relationship to broader Council planning documents, to continue to support Council's objective to attract and retain businesses in the Horowhenua district.

Council recommends that absence of the whole package and these significant gaps, are further reasons for the Bill not proceeding at this point. Without the additional proposed legislation developed and publically released for consideration as a package the full implications cannot be considered. In developing that additional legislation, the Council recommends the following are enabled:

1. Transition arrangements

- That the Government works closely with local authorities to plan for, adequately fund and resource transition activity to ensure that service delivery is maintained alongside transition planning and implementation. Council welcomes the Associate Minister of Local Government's transition funding announcement on 19 July 2022.
- That further legislation grandparents, at a minimum, current operative Council Long Term Plan investment plans (including the relevant Asset Management Plans) into the initial programme of activity for the new water service entity.

2. Pricing and charging arrangements

- That Councils' three waters borrowings will be repaid by central government.
- That water services entities are required to enable a differentiated approach, for example, so that Development Contributions be set based on the Horowhenua catchment and not harmonised.
- That Development Contributions provided for development in a councils region (e.g. Horowhenua) should directly benefit the local community. This approach supports the statement referred to above, that:

“Water services are an essential building block for communities. Public health and well-being, better environmental outcomes, economic growth and job creation, housing and urban development, climate change, resilience to natural hazards, and the rights and interests of iwi and Māori all depend on better outcomes for those services.”

- That Government investigate the enabling of co-funding mechanisms with Territorial Authorities to ensure that local prioritisation of growth projects that sit outside investment prioritisation frameworks or water entity timelines can be progressed if local support and funding is present.
- That the principles used to allocate the “better off” funding package should be carried into allocation of capital funding for new entities.
- That clarity is provided about whether rural communities that do not receive water services would be expected to pay water and wastewater costs.
- That clarity and certainty is provided for industry and horticulture about pricing and compliance requirements to enable informed investment decisions about their future.
- That clarity is provided about the principle of equity in charges for commercial versus residential Three Waters services will be achieved.

Conclusion

Because of the fundamental flaws in this Bill, Council recommends that the Select Committee recommend that it not proceed and be returned with a strong recommendation that a genuine cross-party solution is found. Both the Select Committee and the Government can gain public support for taking this approach.

Alternatively, if the Bill is to progress, Council would like the recommendations suggested included to improve the establishment and future operation of the water services entities.

A list of the recommendations above is attached.

The Council wishes to appear in support of this submission.

Yours sincerely,



Bernie Wanden, JP
District Mayor



Monique Davidson
Chief Executive

APPENDIX 1

Horowhenua District Council Recommendations

Recommended approach

Council considers the sequencing of three waters reforms ahead of finalisation of the Government's own concurrent future of local government review is ill-considered and inappropriate

There are other credible and workable models and approaches that should have, and could still, be explored (by Government or councils themselves) as an alternative to, or enhancement, to the current reform proposals;

The absence of community engagement means information has not been provided to adequately inform communities of the detail and consequences of the proposed reform. Nor has it enabled the community to discuss the proposals with those designing and advocating for them.

1. Council stands by its earlier position that the Government should immediately pause the current reform programme to consider appropriate sequencing and allow for the investigation and development of other alternative more localised or regional collaborative or aggregated approaches to achieving better three waters outcomes.
2. Council recommends that the approach is changed and an enduring solution is sought through a genuine cross-party process to ensure community interests are at the heart of any solution.

As amendments to the proposed Bill, Council recommends:

Part 2 - Water Services Entities

Objectives

3. That clause 11(f) requiring water services to be delivered 'in a sustainable manner that seeks to mitigate the effects of climate change and natural hazards and supports or improves community resilience'.
4. That clause 11(g) be added to require the water service entities to implement sustainable procurement practices throughout the supply chain including contributing to local employment and economic activity.

Functions of water entities

5. That a new subclause 12(c) be added to clarify that this clause includes giving effect to providing for new and existing businesses as committed to in Spatial Plans and Long Term Plans.
6. That clause 14 be deleted as it is repeated in clause 114(1) and (2).

Regional Representative Groups

7. That bespoke arrangements are made for representation for each water services entity, that council representation is increased and serious consideration of addressing the unequal resourcing positions of pre-settlement iwi being asked to vie for places against post-settlement iwi.

Part 4 - Financial and accountability matters

GPS: Water Services

8. That central policy direction comes with greater central government investment. Any centralised control via a GPS is followed by funding from the centre.
9. That Central government also needs to assist with assessing and funding investment needed to address historic degradation and inequalities.

Statement of Intent

10. That the first Statement of Intent include the following:
 - That Water Service Entities are required to plan for and deliver services in a manner that supports the delivery of the proposed regional Spatial Plans and District level Long Term Plans.
 - That the Water Service Entities is required to provide an investment prioritisation framework.
 - That there is a clear process for every council to influence the Statement of Intent for their water service provider, to ensure alignment of service delivery with their strategic priorities.
 - An amendment to clause 145(3)(a) *'the forecast financial statements for each financial year in the period to which the statement of intent relates'* to add *'and a minimum underpinned quantity investment per annum in water infrastructure is specified for each region to ensure infrastructure is built to meet future demand.'*

Funding and Pricing Plan

- That clause 151(2)(d) be inserted as follows: *"specify the entity's approach to achieving affordability for consumers"*

Part 6 - Miscellaneous

Engagement

11. That Subpart 3 – Engagement be moved into *Part 4 - Financial and accountability matters*.
15. That clause 202(2) be amended to read:
 - (2) *Engagement requires that a water services entity do either or both of the following before deciding on a matter:*
 - (a) *Consult and collaborate on a proposal; and*
 - (b) *Seek input during the formulation of a proposal, or feedback on a proposal, on an iterative basis.*

Additional legislation

Transition arrangements

12. That the Government works closely with local authorities to plan for, adequately fund and resource transition activity to ensure that service delivery is maintained alongside transition planning and implementation.
13. That further legislation grandparents, at a minimum, current operative Council Long Term Plan investment plans (including the relevant Asset Management Plans) into the initial programme of activity for the new water service entity.

Pricing and charging arrangements

14. That Council's three waters borrowings will be repaid by central government.
15. That water services entities are required to enable a differentiated approach, for example, so that Development Contributions be set based on the Horowhenua catchment and not harmonised.
16. That Development Contributions provided for development in a councils region (e.g. Horowhenua) should directly benefit the local community.
17. That Government investigate the enabling of co-funding mechanisms with Territorial Authorities to ensure that local prioritisation of growth projects that sit outside investment prioritisation frameworks or water entity timelines can be progressed if local support and funding is present.
18. That the principles used to allocate the "better off" funding package should be carried into allocation of capital funding for new entities.

19. That clarity is provided about whether rural communities that do not receive water services would be expected to pay water and wastewater costs.
20. That clarity and certainty is provided for industry and horticulture about pricing and compliance requirements to enable informed investment decisions about their future.
21. That clarity is provided about the principle of equity in charges for commercial versus residential Three Waters services will be achieved.