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Members of the Finance and Expenditure Select Committee

Water Services Legislation Bill and the Water Services Economic Efficiency and Consumer Protection Bill

Horowhenua District Council welcomes the opportunity to submit on the Water Services Legislation (WSL) Bill and the Water Services Economic Efficiency and Consumer Protection (WSEEC) Bill. This submission comments on both Bills.

Legislative drafting error constrains Councils' planning process

There is inconsistency between Clause 27 of Schedule 1AA to the Local Government Act 2002 (LGA), and Subpart 4 of Schedule 1 of the Water Services Entities Act 2022 (WSEA), in relation to the long-term planning that can be undertaken by local authorities during the establishment period.

Both provisions form part of the transitional arrangements for the Government's Three Waters reform proposals, and have been enacted.

The provisions of Subpart 4 of Schedule 1 of the WSEA confer oversight powers on the Department of Internal Affairs for certain decisions proposed by local authorities (includes long-term plans (LTP) and amendments to long-term plans (LTPA)); and Clause 27 of Schedule 1AA to the LGA precludes local authorities from including any content relating to water services from any long-term planning (which includes amendments to long-term plans).

The preclusion in clause 27 means that local authorities cannot practically initiate any long-term planning that addresses the provision of water services during the establishment period, which in our view does not reflect the policy sitting behind Subpart 4 of Schedule 1 of the WSEA. Importantly, and of most concern to us and the sector, the preclusion captures amendments to long-term plans, which certain councils consider necessary this year (as part of their annual plan cycle, or separately).

The sector is in receipt of advice from Local Government New Zealand which states that the phrase 'and amendments' in clause 27 (LGA) includes amendments to the current (21/31) LTPs. We understand that this view is shared by the Office of the Auditor-General and has recently been communicated by Audit New Zealand.

The practical impact of clause 27 is that local authorities who need to initiate any amendments to the LTPs may not include any information relating to three water services (in their proposed amendment, or associated documentation). As local authorities retain full responsibility for the provision of water services up to the close of 30 June 2024, this is unduly constraining of their ability to make decisions relating to this service.

Any LTP amendment must show updated forecast financial statements, and so this preclusion creates an issue, as it will not be possible to include information on the costs of and funding for three water services. 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.

If a Council fails to carry out the above, Audit NZ have indicated that it would result in an adverse audit opinion - *An adverse opinion states that the financial statements do not present fairly the financial position, results of operations, or cash flows of the entity in conformity with generally accepted accounting principles. An adverse opinion can seriously damage a company's reputation.* Far from ideal for councils wanting to be genuine, transparent and build trust with their communities.

It is completely unrealistic, and in our view unachievable to develop a 2023 Long Term Plan Amendment that excludes 3 Waters. The Long Term Plan Amendment has been months in the making and simply 'excluding' 3 Waters will have an impact on critical financial parameters. It will result in a domino effect; re-calculations will result in failure to meet audit deadlines; resulting in failure to uphold section 93A of Local Government Act 2002; resulting in extended timeframes, late audit opinions and ultimately, the failure to adopt a Long Term Plan Amendment by 30 June 2023 as mandated by the Local Government Act 2022.

The drafting error which is in contradiction to the practical transition guidelines will constrain us from delivering a Long Term Plan Amendment for our community. The obvious lack of understanding and disregard of the adverse implications of such an error does not install confidence in our Council in the ability of the government to deliver on the reform in its current state.

Recommendation

Amend clause 27, schedule six of the Local Government Act to exclude amendments to the 2021/31 long-term plans thus ensuring local authorities are able to demonstrate accountability to the community and manage the financial consequences of their delivery of water services to 30 June 2024

Three Waters in Horowhenua District

The Council's three waters network (drinking water, wastewater, and stormwater) includes 961.16km of pipes, 15 reservoirs, 73 pump stations and 11 treatment facilities, with a combined value in the hundreds of millions. The network services 12,547 water supply connections; 10,737 wastewater connections; 12,527 storm water connections. Our three waters system, by its very nature, is largely out of sight and can be easily overlooked.

Our role - Kaitiakitanga

We as Council, in collaboration with Horowhenua Tangata Whenua share Kaitiakitanga. Our role as kaitiaki is to have guardianship of and to care for the mana and the mauri of our environment – of people, animals, plants, of water and land. We have many purposes with our role as kaitiaki; partnerships, community, wellbeing, infrastructure, recreation, education. With or without 'three waters,' we will still be guardians of our rohe and advocate for positive outcomes that enhance the wellbeing of our people and environment, which will protect a future that matters. Kaitiakitanga is never ending.

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 enhanced access and 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 Council's 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.

Our position

We acknowledge that safe, reliable, and affordable water services that support good health and environmental sustainability are critical for our community. Horowhenua District Council's position on the Three Waters reform remains unchanged from its submission to the Finance and Expenditure Committee on 22 July 2022.

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.

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 and 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.

Water Services Legislation Bill

Purpose of WSEs and local government

Under the Local Government Act 2002, councils are required to promote the social, economic, cultural and environmental wellbeing of communities. This drives how councils make decisions about the investments we undertake and services we deliver. WSEs do not share this purpose, and their governing legislation does not reflect the important role water services play in upholding the social, economic, cultural and environmental wellbeing of communities.

The WSL Bill appears to treat councils as just another stakeholder group for a WSE to engage with.

Stormwater

There is significant complexity associated with a part-transfer of stormwater functions to a WSE. It is important that the functions, powers, obligations and liabilities of the respective agencies for stormwater are clear with adequate protections for all parties.

There is a lack of clarity between the new “transport stormwater system” definition (clause 5 of the Bill) and the WSE’s stormwater network (from which transport stormwater systems are excluded). Where a road discharges to a stream located within the road corridor, the stream is presumably to be treated as “green water services infrastructure”, and part of a transport stormwater system, as opposed to being part of the WSE’s stormwater network. However, when the stream meanders and is no longer in the road corridor, it will not be a part of the transport stormwater system, and it will then become part of the stormwater network for which the WSE is responsible (or, if in the rural environment, part of the network that will be the responsibility of the council).

Under the Bill, the dividing line between the systems, and therefore responsibility, is unclear. The definition of “transport stormwater system” refers to infrastructure used or operated by a transport corridor manager to drain or discharge stormwater affecting a transport corridor. This seems to mean that the infrastructure (including green water services infrastructure) does not necessarily need to be located ‘in’ the transport corridor to be part of the transport stormwater system.

Furthermore, if a stormwater management plan or set of rules is prepared, and seeks to regulate discharges into the WSEs network (which is empowered), will this mean that those rules will not apply uniformly to all intersecting networks? There is scope for uncertainty here that should be resolved.

Stormwater charging

The stormwater charging regime will not be established until at least 30 June 2027. The WSL Bill contemplates allowing WSEs to charge councils for stormwater service provision until this time as they will be unable to charge consumers directly. However, other provisions in the Bill prohibit councils from including any three waters related content into their long term plans so they would be unable to generate revenue from rates for these costs. In short, who would bear the costs of stormwater in this extended transition period remains undecided and problematic.

Recommendation

Amend the WSL Bill provisions on stormwater (including definitions) to clarify the points of intersection between the stormwater networks of road controlling authorities, councils and WSEs, particularly where the road controlling authority responsibilities would end and those of a WSE would start.

Delete clause 63 OR amend clause 27, Schedule 1AA of the Local Government Act 2002 and/ or include a specific provision to allow councils to rate for any stormwater services being charged to them by a WSE.

Asset and liability transfer

The transfer of assets and liability from councils to WSEs is a complex matter with the potential to significantly disadvantage the parties if not done carefully and with integrity. We urge the Government to honour its commitment in the Heads of Agreement with LGNZ that all councils will be 'no worse off' as a result of the transition.

Allocation schedules

The process for preparation of an allocation schedule has been enhanced by the inclusion of new section 39 of Schedule 1 to the WSL Bill (consultation on allocation schedule) – a requirement by a WSE to engage with councils, and an ability for councils to provide comments on the content of a draft allocation schedule. After comments are provided, the establishment CE is obliged by clause 39(d) to inform councils in writing of the reasons for any “amendments made” to the draft; there is no requirement to respond generally to comment made by Councils. We recommend new section 39(d) be extended to cover reasons for not making amendments as well.

Clause 40 of the Bill also provides the Minister with the power to approve the allocation schedule, and power to make “any amendments the Minister considers appropriate”. This is an unconstrained power with no apparent policy basis (this is not an emergency situation requiring instant decision-making powers). We recommend this power should be, at the least, linked to a requirement to consider the written comments provided by a council, the response from the establishment CE, and a requirement to provide reasons for any changes to the allocation schedule.

We also recommend changes to the dispute resolution process in new section 44 of Schedule 1 of the WSL Bill. The immediate leap to costly and binding arbitration in the case of a dispute is extreme. There needs to be an intermediate step of mediation to attempt to resolve matters. We also recommend that the amended dispute resolution process be made available to any disputes over the allocation schedule transfer process in clause 42, not just the process in clause 43.

Purpose of Water Services Entities and Local Government

Under the Local Government Act 2002, councils are required to promote the social, economic, cultural and environmental wellbeing of communities. This drives how councils make decisions about the investments we undertake and services we deliver. WSEs do not share this purpose, and their governing legislation does not reflect the important role water services play in upholding the social, economic, cultural and environmental wellbeing of communities.

The WSL Bill appears to treat councils as just another stakeholder group for a WSE to engage with. The WSL Bill provides for collaborating with hapū or iwi relating to the provision of water services. However, the Bill is silent on collaboration with any agencies outside the water sector (section 13(j) of the WSL Bill acting to limit the agencies WSEs are expected to collaborate with to water services sector-related). Building strong relationships with the business sector to plan for and enhance economic wellbeing and collaborating with other utility providers to share learnings and best practice, is equally as important as collaboration with overseas water agencies (as set out in proposed new section 13(k)).

Recommendation

Amend Part 1 clause 7 by adding collaboration with other infrastructure providers to promote social, environmental and economic wellbeing to the list of functions of water service entities.

Relationship Agreements – Part 13, sub-part 3

The purpose of a Relationship Agreement is to identify the governing principles, dispute resolutions processes, information sharing arrangements, any arrangements with hapū or iwi relating to the provision of water services for which the parties have obligations for, ways of working to operate and maintain stormwater, and engagement processes between the parties for strategic planning.

WSEs are required to enter into Relationship Agreements with a territorial authority owner, a regional council whose boundary is inside, or overlaps with, the water services entity's service area, and a transport corridor manager whose jurisdiction overlaps with the water services entity's service area. One Relationship Agreement can be entered by multiple parties.

These agreements are not legally binding and are to be high-level, setting out how the parties intend to work together collaboratively and in good faith. Given that the relationship agreement will not be legally enforceable, the WSL Bill should do more to establish the context of the special role and nature of the relationship agreement between a WSE and a council – via an express statutory basis and mandate. In its current form, the WSL Bill treats councils as simply another stakeholder, rather than the core organisation undertaking growth planning and placemaking which three waters services enables. The legislation needs to reflect that WSEs will operate within a broader system that services communities but that councils remain central to that overall picture as well as being democratically accountable. Communities should be able to expect both service organisations to work together for their benefit.

We want to see a requirement for a relationship agreement to include how WSEs will support councils to deliver their statutory obligations around long term plans and infrastructure strategies. Council has to prepare a long term plan every three years that goes through a prescriptive process under the Local Government Act 2002 and involves extensive community engagement. The long term plan process becomes more intense as it progresses through the last six months prior to adoption having

very little 'wobble room' to accommodate anything that might delay the process (including any changes to delivering activities that would impact on financial bottom lines). The long term plan process includes development of infrastructure strategies (and financial strategies).

Recommendation

The WSE extend the intention of WSE Relationship Agreements to include the special role and nature of the Council. 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. Specifically, the WSE needs to clarify how it will support legislative requirements, and give effect to growth and placemaking requirements of the Council's District and Spatial plans as the WSEs prepare 30 -year infrastructure strategies.

Paying rates

Under proposed new section 342 of the WSL Bill (WSEs not liable for rates), WSEs will not pay rates on pipes through land they do not own, nor on assets located on land they do not own. Council strongly disagrees with this provision.

This would treat WSE infrastructure differently from all other network infrastructure, for example, telecommunications, gas, and electricity pipes or lines, all of which is rateable when fixed in, on or under the road. Council must be able to cover the costs of its activities. While Council will not (post-transition) be delivering three waters, it will still have collaboration costs associated with three waters, including engagement with WSEs on shared functions (such as stormwater management plans) and impacting functions (such as spatial planning and resource management).

Council uses the principles in the Local Government Act 2002 for determining how to rate for its activities. The drivers of the need for the activity or service and those who benefit from the activity or service will share in the costs of the provision of that service. The Council's position is that there is no good reason for giving WSE infrastructure special rates treatment. Doing so is inconsistent with the proposed financial independence (and self-sustaining policy) of the WSEs, in particular the prohibition on council owners giving their WSE financial support (section 171(1)(c) of the WSEA). An exclusion from paying rates is, in substance, a form of financial support. Councils should not be subsidising WSEs.

In addition, if the intention in the WSL Bill is to make land owned by WSEs non-rateable, this is also opposed. Clause 137 of the Bill proposes an amendment to the Schedule of non-rateable land in the Local Government (Rating) Act 2002 to add a new clause 3(3)(e) (although this reference appears to be in error). There is nothing about land used for water services that qualifies it for non-rateability. The same land used for the same purposes and presently owned by councils or their CCOs is fully rateable, and there is no good reason for altering that status, and depriving councils of much needed rates revenue, simply because the assets are transferring to WSEs. Pertaining to resourcing, if any WSE land is to be non-rateable, the Council will still be required to assess that land in the normal way, which is a resource burden on the Council that should not be arbitrarily accommodated.

Recommendation

That section 342 of the WSL Bill is removed to allow councils to rate WSEs for all land holdings, pipes through land they do not own, and on assets located on land they do not own.

That there is no amendment to the Schedule of non-rateable land in Local Government (Rating) Act 2002

Billing

Pass through billing - the Chief Executive of WSE may authorise local authorities to collect charges. The expectation is that councils will collect charges on behalf of the water services entity, with reasonable compensation for doing this work. If there is any disagreement regarding the terms of a charges collection agreement the matter must be referred to the Minister (to be resolved within 20 working days). The charges collection agreement expires at the close of 30 June 2029.

We find it unacceptable that local government must collect water charges on behalf of WSEs until potentially 2029. We oppose being compelled to collect revenue for a service that we no longer control and deliver, despite a 'reasonable payment' being made for providing this service. This arrangement has the potential to cause public confusion as councils will be collecting money for a service, they have no direct accountability for. There will potentially be a significant administrative burden to manage for unpaid charges. It is noted that local authorities are not required to take responsibility for unpaid charges but are required to advise the Entity Chief Executive about the unpaid charge and if Council does not intend to collect the unpaid charge.

Recommendation

That clauses 336-338 be removed from the WSL Bill and Entities take responsibility for their own billing requirements.

Governance structure and accountability

The regional representative groups and regional advisory panels, entities and their boards are to be accountable to communities. We wish to reiterate our Council's concerns raised in our submission on the Water Services Entities Act 2022 relating to the complexity of the governance structure diluting local voice.

Each body will be representing a wide geographic area with many diverse communities and areas of interest.

- Local communities need to be assured that their interests are safeguarded and represented in this process.
- We suggest that the Regional Representative Group (RRG) works with councils and iwi/Māori to develop a model that allows for strong local/ regional representation based around sub-Water Service Entity cluster areas. This could be achieved in the interim through applying existing regional council boundaries, entailing the local councils and iwi.
- In resolving any tension between councils and the WSEs, it appears that councils would 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').

- We are concerned that planning and investment prioritisation processes have the potential for misalignment between those plans councils produce and the prioritised infrastructure delivery of the WSEs. For example:
 - Approval of the Statement of Expectation (SOE) and Statement of Intent (SOI) as they need to be aligned with the representative groups at the sub-WSE areas.
 - Alignment of the WSE planning processes with spatial planning and proposed Resource Management Act (RMA) reforms at regional and local levels.

When combining the WSEs' governance arrangements with some of the function outlined in the WSL Bill, such as councils collecting water services rating on behalf of WSEs, our Council is concerned that there will continue to be an implicit expectation from the community that local government is still responsible for three waters service delivery. Councils need to have control over things they are responsible for. In fulfilling its Local Government Act 2002 responsibilities, local government must be given the mandate to set some of the operating parameters that a WSE must respond to in order for local government to deliver on its duties and objectives.

Reconfiguring agreements

The provisions around reconfiguring agreements in new clauses 52 and 53 of Schedule 1 of the WSL should be amended to ensure:

- the power to direct the splitting of a contract between a Council and WSE is not unduly limited
- Councils are given the same ability as WSEs would have to provide comments to the Minister in relation to a proposed direction on the reconfiguration of a contract.

Clause 52, Part 2 of Schedule 1 to the WSL Bill provides a mechanism for existing agreements to be split, so some of a council's rights and obligations under an agreement are transferred to a WSE. However, under clause 52(6)(c), the agreements must be split by "a local government organisation remaining a party in relation to certain provisions and the board of the water services entity replacing the local government organisation as a party in relation to other provisions".

In some instances it may be useful to split a contract by way of the services provided under the contract, rather than being restricted to severing off whole provisions of a contract. If the current drafting is retained, there may be a tendency for the Minister to direct the sharing of contracts rather than splitting. This would likely disadvantage councils, as under clause 52(10), a council would be left with the liability associated with those aspects of the contract that relate to the WSE's functions.

Clause 53 enables a WSE Board, but not a council, the ability to comment on a proposed direction relating to a reconfiguration of an existing agreement. This is unfair and should be amended. The reconfiguration of a council's existing agreement(s) may impact on the council's ability to discharge its remaining statutory functions so councils should be given an opportunity to raise any potential issues prior to the direction being made.

Debt

We are concerned about the process for determining Council's three waters debt in new section 54 of Schedule 1 of the WSL Bill. The WSL Bill gives, seemingly, unfettered powers to the Chief Executive of DIA to decide the total water infrastructure debt levels of councils. There is a risk that councils may be stranded with three water debt that they may have difficulty servicing.

Should a council disagree with the determination of the Chief Executive of DIA on the total three waters debt, there appears to be no recourse. There should be. The dispute resolution processes in new section 44 of Schedule 1 to the WSL Bill with the amendments suggested in this submission (to add a mediation step) should apply to debt validation. The Bill anticipates scenarios where councils may keep holding (some portion of) this debt for a period of up to five years. The reason for this needs to be clarified in the WSL Bill along with the debt servicing arrangements.

Balance sheet support

The observation from reviewing the Water services legislation Bill was a distinct lack of direction relating to funding of the new WSE's and any framework or direction for how the entities will be supporting their balance sheet. We would have expected to see some borrowing guidelines relating to who can lend to the organisations along with some direction on what constraints would be applied to the borrowing so as to guide treasury / financing functions once they are stood up. It is critical that when assets are transferred off Council's balance sheet, our Council is left "no worse off" as contemplated when the reform process started – without any detail about how this will occur in this Bill, Council is exposed to significant risk.

The Water Services Economic Efficiency and Consumer Protection Bill

The Water Services Economic Efficiency and Consumer Protection Bill will provide the economic regulation and consumer protection framework for water services. We support the information disclosure elements towards the regulatory policy outcomes targeted for improvement.

Council supports the need for economic regulation and consumer protection as part of the Government's wider three waters reforms.

The economic regulator has an important role to help reassure consumers that there has been proper scrutiny of costs for water services through the range of controls set out in this submission.

We are supportive of a range of economic regulation for water, including information disclosure, price-quality, pricing, consumer protection and dispute resolution.

Economic regulation and consumer protection as a part of the future legislative framework and in relation to the operating requirements of the proposed Water Services Entities (WSE) are important to ensure:

- fair and transparent pricing
- incentivisation and transparency of performance
- increased efficiencies, over time
- an investment pathway for addressing long-term issues (rather than ad-hoc and reactive decision making)
- consumers have clear channels for raising issues and can have confidence in fairness of pricing
- effective resolution of disputes.

Integrated and bespoke approach:

Economic regulation for water must be carefully designed as part of the wider three waters reforms and ensure a bespoke approach that balances economic efficiency with broader outcomes.

This includes how economic regulation for three waters relates to:

- the wider design of legislation and system stewardship arrangements
- representation and governance
- planning integration processes
- how economic regulation works with the other water regulators to give economic effect to their requirements; and
- transition processes and timing.

Economic regulation for water will require a different approach to that seen in other regulated sectors. The three waters are inherently more complex than those utilities currently regulated by the Commerce Commission. Reasons for this include:

- The WSEs differ from the other regulated monopolies in their degree of vertical integration and complexity – spanning from bulk water supply, to reticulation, servicing households and businesses across three waters, and the billing and customer relationship with end users. They must also grapple with security and scarcity constraints.
- The WSE will offer a fully integrated service – collection, treatment and distribution of three waters. There's no separate retail layer (as in electricity, gas and telecommunications), so the firms will have to manage billing, revenue assurance, infrastructure planning and investment.
- The WSE will be subject to Government stewardship arrangements, including a Government Policy Statement.
- The WSEs will be bigger (by value) than any network the Commerce Commission currently regulates, and this will only grow based on the renewal, growth, service improvement and climate change adaptation investment anticipated. Investment will include significant CAPEX programmes across multiple projects in each WSE.
- Economic regulation for water will be closely interlinked with wider regulation and governance / representation. Roles, responsibilities and decision-making accountabilities need to be clear.
- In addition to economic regulation, the WSEs will be regulated by Taumata Arowai and by environmental planning controls (primarily through regional councils). These will directly drive investment requirements. Economic regulation needs to accommodate other regulatory requirements and how these will impact on costs, quality and management practices.
- Water is essential for the well-being of people. Water services cannot simply be disconnected if there are issues of non-payment or debt. This includes statutory requirements under the Health Act.

Support for policy direction

We are supportive of the following key policy settings of the Bill in that:

- economic regulation focuses on the four proposed WSE, rather than other smaller rural and community-based providers and schemes. This is to ensure that the regulation model focuses on where it can have the greatest benefit, is cost effective and can be effectively resourced. We are also supportive that economic regulation will apply to all three waters
- the Bill allows for flexibility and different approaches to regulating entities, such as Entity A, and services, such as stormwater
- information disclosure regulation and quality-only regulation should apply in the first regulatory period. Subject to flexibility on implication dates that information disclosure regulation and

price-quality regulation will apply in the second regulatory period. A flexible approach is critical to enable development of the information and capability requirements.

- The Commerce Commission be required to set and enforce minimum service level codes
- A consumer dispute resolution scheme be established for the three waters sector, as well as other measures to strengthen the consumer voice
- A position of a Water Commissioner, or similar, be established on the Commerce Commission board

Amendments required to the Water Services Economic Efficiency and Consumer Protection Bill

Economic regulation needs to be fully integrated and aligned with the design and policy decisions of the water reforms. Particular attention needs to be given to the wider community benefits and environmental outcomes expected.

In addition to efficiency, investment by the WSE must also balance meeting regulatory requirements and delivery of broader social, cultural and environmental outcomes. There needs to be more recognition of climate change, resilience and the costs and service levels that this will require. There are also cost and service level implications for meeting specific environmental and social expectations. e.g., how wastewater is treated and how drinking water is disinfected. The new freshwater regulations will also require significant investment into wastewater treatment and retention ponds.

Such considerations are outside of a focus on efficiency and need to include thinking around resilience, (increased stormwater capacity, redundancy of pipe networks e.g., duplicated mains, wastewater sumps for overflows, and bigger water storage). Such matters will need to be factored into any price / quality regulations.

As drafted, the Bill does not sufficiently recognise the wider range of outcomes that are enabled by investment in three waters and there is a risk that a focus on cost and price will override the ability of the WSE to also invest to enable community outcomes or growth. These broader outcomes need to be better reflected in the Bill, including in Part 1 clauses 3-6.

Clause 12 appears too narrow to cover all the relevant characteristics and outcomes enabled by WSE services. These include a range of environmental, economic and social outcomes.

We submit that a modified version of the objective statement should be developed, which balances a workably competitive market (and understood outcomes of innovation, investment, efficiency, quality, prices, and profit), with community and environmental outcomes, and the principles of Te Mana o te Wai.

We suggest three complementary objective statements. These would need to be aligned with the statutory objectives of WSE (this may require amendments to the Water Services Entities Bill). The three objectives would be:

- Outcomes for consumers consistent with competitive markets and relevant to services provided to connected parties.
- Outcomes for communities and the environment consistent with a well performing local authority. This part of the objective statement could borrow from s14 of the Local Government

Act 2002, and most of the matters there are relevant to the provision of public or quasi-public services.

- Outcomes consistent with Te Mana o te Wai. The part of the objective statement could borrow from section 3.2 of the National Policy Statement for Freshwater Management 2020.

Te Tiriti and Te Mana o te Wai

Economic regulation will also need to consider how to give effect to the principles of Te Tiriti o Waitangi. This includes recognition of co-governance of the WSE and how economic regulation reflects and recognises the principles and outcomes sought through Te Mana o te Wai which puts the health of a waterbody first, human health needs second, followed by recreational, economic and other needs.

We recommend that further consideration is given as to whether the Bill sufficiently considers how economic regulation can give effect to Te Tiriti o Waitangi and the principles and outcomes sought through Te Mana o te Wai. This may require a specific statutory objective or changes to clauses 6 and 12.

Consumers

The Bill does not adequately identify the range of consumers, services provided to each consumer group, and whether these services are supplied by a WSE or another body. This may require amendments to clause 7 or a new section.

Consumers will include a range of types of users:

- Households
- schools, hospitals and other social / community institutions
- Iwi / Māori
- local and regional councils
- land and property developers
- a range of corporate and commercial users, including very large industrial consumers
- rural consumers
- vulnerable consumers
- private and community water schemes and self-suppliers

Defining what is meant by a consumer and understanding the range and variability of water consumers will be critical to successfully developing a regulatory framework that advances the long-term interests of consumers. We recommend that further consideration and focus is given to defining consumer groups, services, and the role and statutory powers of WSE and economic regulation in relation to each group.

Capability and timing

Timing and enabling flexibility in the implementation approach are critical to support the development of the required capacity and capability of WSEs to meet economic regulation requirements.

Water reforms will take time to embed and mature. In this environment, it will be vital that economic regulation plays a constructive and proactive role to support and work with WSE and Taumata Arowai to meet bottom lines and regulatory requirements.

Economic regulation also places a lot of demands on an organisation in terms of reporting and long-range planning. We therefore consider that it will be important to take a transitional approach to

economic regulation while also ensuring that the pathway is clear and achievable so that this can be planned for and resourced. Establishment and transition will require a learning culture and an approach based on sharing of lessons and raising sector capability.

We suggest the Bill includes a stronger focus on the capability, culture and behaviours to ensure economic regulation plays a constructive and proactive role to support and work with WSE and Taumata Arowai to meet bottom lines and regulatory requirements.

Support of submissions

Horowhenua District Council supports and endorses in full, the following submissions on the Water Services Legislation (WSL) Bill and the Water Services Economic Efficiency and Consumer Protection (WSEEC) Bill from:

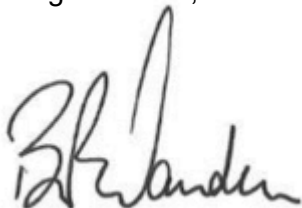
- Local Government New Zealand
- Taituarā
- Communities 4 Local Democracy

Timing of submissions

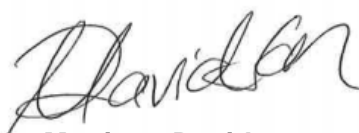
We are disappointed at the timing of the release of the two water services bills and the short submission period. It coincides with the Christmas and New Year period and the submissions periods for the two resource management bills and the Future for Local Government Review report. This made preparing a submission on this important matter very difficult. We remain concerned that this difficulty would have been even more pronounced for Iwi partners, members of the public, and community groups.

Horowhenua District Council thank you for the opportunity to submit on these bills. We would like the opportunity to appear before the Committee in support of this submission.

Ngā mihi nui,



Bernie Wanden
Mayor



Monique Davidson
Chief Executive