Western Bay of Plenty District Council

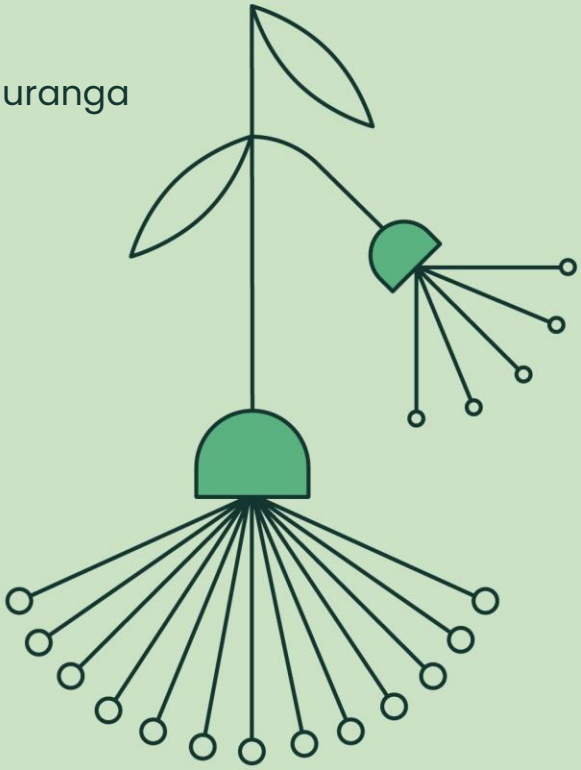
Mā tō tātou takiwā

For our District

Strategy and Policy Committee

Kōmiti Rautaki me Kaupapa Here

SPC23-2
Thursday, 13 April 2023, 11.00am
Council Chambers, 1484 Cameron Road, Tauranga



Strategy and Policy Committee

Membership:

Chairperson	Mayor James Denyer
Deputy Chairperson	Cr Richard Crawford
Members	Cr Tracey Coxhead Cr Grant Dally Cr Murray Grainger Cr Anne Henry Cr Rodney Joyce Cr Margaret Murray-Benge Deputy Mayor John Scrimgeour Cr Allan Sole Cr Don Thwaites Cr Andy Wichers
Quorum	Six (6)
Frequency	Six weekly

Role:

- To develop and review strategies, policies, plans and bylaws to advance the strategic direction of Council and its communities.
- To ensure an integrated approach to land development (including land for housing), land use and transportation to enable, support and shape sustainable, vibrant and safe communities.
- To ensure there is sufficient and appropriate housing supply and choice in existing and new urban areas to meet current and future needs.

Scope:

- Development and review of bylaws in accordance with legislation including determination of the nature and extent of community engagement approaches to be deployed.
- Development, review and approval of strategies and plans in accordance with legislation including
- determination of the nature and extent of community engagement approaches to be deployed.
- Subject to compliance with legislation and the Long Term Plan, to resolve all matters of strategic policy outside of the Long Term Plan process which does not require, under the Local Government Act 2002, a resolution of Council.

- Development of District Plan changes up to the point of public notification under the Resource Management Act 1991.
- Endorsement of the Future Development Strategy and sub-regional or regional spatial plans.
- Consider and approve changes to service delivery arrangements arising from service delivery reviews required under the Local Government Act 2002 (provided that where a service delivery proposal requires an amendment to the Long Term Plan, it shall thereafter be progressed by the Annual Plan and Long Term Plan Committee).
- Where un-budgeted financial implications arise from the development or review of policies, bylaws or plans, recommend to Council any changes or variations necessary to give effect to such policies, bylaws or plans.
- Listen to and receive the presentation of views by people and engage in spoken interaction in relation to any matters Council undertakes to consult on whether under the Local Government Act 2002 or any other Act.
- Oversee the development of strategies relating to sub-regional parks and sub-regional community facilities for the enhancement of community wellbeing of the Western Bay of Plenty District communities, for recommendation to Tauranga City Council and Western Bay of Plenty District Council.
- Consider and decide applications to the Community Matching Fund (including accumulated Ecological Financial Contributions).
- Consider and decide applications to the Facilities in the Community Grant Fund.
- Approve Council submissions to central government, councils and other organisations, including submissions on proposed legislation, plan changes or policy statements.
- Receive and make decisions and recommendations to Council and its Committees, as appropriate, on reports, recommendations and minutes of the following:
  - SmartGrowth Leadership Group
  - Regional Transport Committee
  - Any other Joint Committee, Forum or Working Group, as directed by Council.
- Receive and make decisions on, as appropriate, any matters of a policy or planning nature from the following:
  - Waihī Beach, Katikati, Ōmokoroa, Te Puke and Maketu Community Boards.
  - Community Committee.

Power to Act:

- To make all decisions necessary to fulfil the role and scope of the Committee subject to the limitations imposed.

Power to Recommend:

- To Council and/or any Committee as it deems appropriate.

Power to sub-delegate:

- The Committee may delegate any of its functions, duties or powers to a subcommittee, working group or other subordinate decision-making body subject to the restrictions within its delegations and provided that any such sub-delegation includes a statement of purpose and specification of task.

- Should there be insufficient time for Strategy and Policy Committee to consider approval for a final submission to an external body, the Chair has delegated authority to sign the submission on behalf of Council, provided that the final submission is reported to the next scheduled meeting of the Strategy and Policy Committee.

Notice is hereby given that a Strategy and Policy Committee Meeting will be held in the Council Chambers, 1484 Cameron Road, Tauranga on:

Thursday, 13 April 2023 at 11.00am

Order Of Business

1 PRESENT

2 IN ATTENDANCE

3 APOLOGIES

4 CONSIDERATION OF LATE ITEMS

5 DECLARATIONS OF INTEREST

Members are reminded of the need to be vigilant and to stand aside from decision making when a conflict arises between their role as an elected representative and any private or other external interest that they may have.

6 PUBLIC EXCLUDED ITEMS

7 PUBLIC FORUM

A period of up to 30 minutes is set aside for a public forum. Members of the public may attend to address the Board for up to five minutes on items that fall within the delegations of the Board provided the matters are not subject to legal proceedings, or to a process providing for the hearing of submissions. Speakers may be questioned through the Chairperson by members, but questions must be confined to obtaining information or clarification on matters raised by the speaker. The Chairperson has discretion in regard to time extensions.

Such presentations do not form part of the formal business of the meeting, a brief record will be kept of matters raised during any public forum section of the meeting with matters for action to be referred through the customer contact centre request system, while those requiring further investigation will be referred to the Chief Executive.

8 PRESENTATIONS

9 REPORTS

9.1 SUBMISSION ON THE WATER SERVICES LEGISLATION BILL AND WATER SERVICES ECONOMIC EFFECIENCY AND CONSUMER PROTECTION BILL

File Number: **A5259900**

Author: **Ariell King, Strategic Advisor: Legislative Reform and Special Projects**

Authoriser: **Rachael Davie, General Manager Strategy and Community**

EXECUTIVE SUMMARY

1. For the information of the Strategy and Policy Committee, this report presents a submission made by the Western Bay of Plenty District Council on the following matter:

   (a) Submission on the Water Services Legislation Bill and the Water Services Economic Efficiency and Consumer Protection Bill.

RECOMMENDATION

1. That the Strategic Advisor: Legislative Reform and Special Projects report dated 13 April 2023 titled 'Submission on the Water Services Legislation Bill and the Water Services Economic Efficiency and Consumer Protection Bill' be received.
2. That the submission, shown as **Attachment 1** to this report, is received by the Strategy and Policy Committee and the information is noted.

ATTACHMENTS

1. Final Submission on WSL Bill and WSEECP Bill 2023 - signed by Mayor Denyer

Western Bay of Plenty District Council
1484 Cameron Road,
Greerton, Tauranga 3112
P 0800 926 732
E info@westernbay.govt.nz

westernbay.govt.nz

Committee Secretariat
Finance and Expenditure Committee
Parliament Buildings
Wellington
ATTENTION: Finance.Expenditure@parliament.govt.nz

Name: Mayor James Denyer
Organisation: Western Bay of Plenty District Council
Postal Address: Private Bag 12803, TAURANGA 3143
Daytime telephone: 0800 926 732
Email address: Emily.Watton@westernbay.govt.nz

Western Bay of Plenty District Council submission to the Water Services Legislation Bill and the Water Services Economic Efficiency and Consumer Protection Bill

Finance and Expenditure Committee,

Western Bay of Plenty District Council (Council) thanks the Select Committee for the opportunity to submit on the Water Services Legislation Bill and the Water Services Economic Efficiency and Consumer Protection Bill.

We note that we were originally provided with an extended submission date of 15 March 2023. This extension was intended to provide a reasonable amount of time to allow for our elected members and staff to consider the bills and provide feedback that reflects the views of our community and elected members. It was also intended to provide time to genuinely engage with our mana whenua partners and understand their thoughts and views and support them in Council's submission.

We were disappointed that the committee decided to amend the submission deadline to 6 March 2023. This reduction in time, coupled with the coincidence of the submission period for these bills, the Natural and Built Environment Bill (NBEB), the Spatial Planning Bill (SPB) and the draft report on the Future for Local Government, over the Christmas and summer holidays, has not illustrated a true collaborative approach to the water services legislative framework. It has also made it very difficult to engage with our stakeholders to understand their views.

The reform process is intended to create 'once in a lifetime' change that provides all New Zealanders with 'safe, affordable and reliable drinking water, wastewater and stormwater'. Our submission (and the submissions of others) highlights numerous issues to be resolved before the legislation would meet the intended outcomes. It appears the three reform processes, whilst concurrent, have been progressed in relative isolation from each

other, and there are gaps and inconsistencies in the proposed arrangements and processes.

In order for reform to be successful, timeframes should enable meaningful and effective engagement to address potential implementation challenges to be identified and resolved. In our view, this reform programme is being undertaken too quickly and as a result effective implementation is at risk.

We support the potential for a 'refocus' of the reform programme as articulated by Prime Minister Hipkins. We would also encourage cross-party collaboration so that greater certainty on the reforms can be achieved.

We would like to reiterate the point made in our submission to the Water Services Entities Bill that there is a broad range of views on the merits of the overall reform and concern at the model chosen by this government, both across our community and around our Council table. While we hold differing opinions, we are committed to seeing that any change delivered is workable and benefits our community.

If the bills proceed, we request that a further iteration of the bills be the subject of further submissions to allow consideration of the amendments made and to consider the implications of such.

We would encourage the government to provide certainty and clarity to the community regarding the proposed changes and opportunities for input. There is still a high level of uncertainty and misinformation within our community as to the progress and intention of the reforms. It is imperative that the government explains to the community the intended changes and benefits anticipated from the reforms. We would also encourage cross-party collaboration so that greater certainty in the reforms can be achieved.

We are concerned that the level of funding that has been set aside for the various transfers and arrangements is insufficient. We request that these costs are fully covered by the Water Services Entity. We also request that a claims process is established to allow Councils to claim back fair costs for other transition costs that may not have been originally anticipated.

As you will be aware, Councils within Water Service Entity B, sought legal support and advice on the two bills from Simpson Grierson. Council generally supports the submission points raised by Simpson Grierson in attachment one and two.

We also generally support the submissions made by Taituarā and Local Government New Zealand.

Please note that we do **not** wish to speak to our submission.

Water Services Legislation Bill submission points and proposed amendments

Clarity of roles, responsibilities, and functions

There is a lack of clarity and uncertainty across the two bills in terms of functions, roles, and responsibilities. This will negatively affect the implementation of the water services entities and the ongoing efficient and effective operation of Councils. It will also have implications for our community and will likely affect the achievement of outcomes intended by the reforms.

The issue of clarity extends to alignment with other legislative reform. In our submission to the Select Committee on the NBEB and SPB we note that this is an issue of paramount importance. The Three Waters reform, the Future for Local Government (FFLG) review and the RMA reform all impact one another.

The premise of centralising or regionalising territorial authority functions is at odds with the findings of the FFLG review, which places importance on localism and the principle of subsidiarity. It seems illogical that these processes, whilst concurrent, are so at odds in their fundamental approach to structure and function. It would have been beneficial for the recommendations of the FFLG review to be finalised and for legislative change to be enacted prior to the completion of the three waters reform.

We draw the Committees attention to the points raised in Topic 2 of attachment one.

Integrated planning

Planning for our communities should not operate within a vacuum. We are concerned that there has not been enough consideration of how the intended changes arising from the RMA reform will be integrated with future water infrastructure requirements and the ongoing operations of the water services entities. Integrated planning and alignment of priorities should also extend to the other utility providers such as power and telecommunications.

We submit that the WSE should be a mandatory member of the Regional Planning Committees envisioned as part of the RMA reform. This would assist in ensuring alignment between three waters infrastructure within spatial planning processes.

Integrated planning is also important if we are to adapt and mitigate the ongoing effects of climate change. Recent weather events have illustrated the susceptibility of our infrastructure and a sustainable solution will require everyone working together. This highlights the need for the Climate Change Adaptation Bill to be considered alongside the reform of three waters and the RMA.

The ongoing and future investment in our country's infrastructure needs to account for the different risk profiles that each community has when planning for redevelopment and

growth. We question how this investment will be prioritised for three waters infrastructure in the absence of a national direction on adaptation.

Capacity and capability

The suite of bills and acts that provide for the water service entities anticipates a significant number of plans, strategies, agreements, and policies for the entities to develop and review. We question whether this is better than what we have now?

Council and Mana Whenua are invited to participate in the development and review of most of these documents. We are concerned that there is not enough capacity to participate and provide meaningful feedback when we combine this requirement with the requirements arising from the RMA reform and the FFLG review. Our capability to engage will also be affected as most technical staff are likely to transfer to the new entity. There are also potential timing conflicts with other processes e.g., Annual Plan, LTP that we have a legislative responsibility for.

We are also concerned that in the recruitment of staff from local government to build the capacity and capability of the Water Services Entities, that local government will no longer be able to function effectively. This could have a financial implication for local government if there are prosecutions that arise from noncompliance with our legislative responsibilities that can be directly attributed to a lack of staff. There is also concern that we will not have staff available to engage with the WSE in the numerous proposed plans, strategies, and agreements.

We emphasise the need for funding to support mana whenua in the ongoing development and future requirements arising from the three waters and RMA reform. Funding should also be set aside to facilitate capacity building and provide training opportunities.

Stormwater

We are not convinced that stormwater functions should transfer to the water services entities at this time (and possibly not at all). We would draw the Committee's attention to the matters raised in Topic 1 of the Simpson Grierson submission points in attachment one.

There seems to be a disconnect between the interaction of stormwater from the rural and urban environments, overland flow paths and the transportation network. This ties back to our comments about the value and need for an integrated planning approach and consistency with the changes anticipated by the RMA reform and the potential requirements of the Climate Change Adaptation Bill.

The current approach is ambiguous as to where the Council's responsibility starts and finishes, especially the demarcation line between where stormwater 'leaves' our system and enters the WSE stormwater system. We also question where the treatment of

stormwater is intended to occur, the associated costs and where these will fall. For example, is it intended that the cost of treatment will fall on the transport activity purely by default as this is where the stormwater will most likely enter the WSE stormwater system?

We understand that the WSE will develop its own development code. We are keen to understand how this will interact and align with Council's development code. We also support a discussion and potential inclusion of urban design principles.

Specifically, we note the following:

- The definition of stormwater needs to be clarified.
- The potential challenges identified with the development of stormwater management plans (s253 and s257) as noted in Topic 2 in attachment one.
- The potential for conflict between the stormwater network rules and land use rules under the RMA (or NBEA).
- Conflict between the stormwater environmental performance standards, existing and future discharge consents issued by a Regional Council and the directives of Taumata Arowai.
- The stormwater management plans do not have a requirement to articulate the level of service and the level of risk mitigation is weak.
- We suggest that the stormwater management plans should be subject to a six yearly review to align with the three yearly reviews of asset management plans and Infrastructure Strategies (rather than the five yearly reviews proposed under section 466)
- We oppose section 342 that provides that in certain cases a WSE is exempt from rates. We also oppose any amendments to the Local Government (Rating) Act that would provide an exemption from paying rates. These costs would then fall directly on our community with no benefit or justification provided.

Amendments to Water Services Entities Act 2022 (WSEA)

We support the amendments to Part 5 regarding partnering and engaging with Mana Whenua, reporting on how specific documents give effect to the Treaty of Waitangi and Te Mana o te Wai. We also support the use of Te Tiriti o Waitangi within the legislation.

We also support the replacement of section 13 of the WSEA that includes functions to partner and engage with its territorial authority owners, mana whenua and a range of other functions including collaboration, support, facilitation etc. in a number of areas. This support is tempered with our general comments regarding the number of plans, processes, strategies that are created and the overall capacity and capability of Mana Whenua to have a genuine opportunity for meaningful engagement in the myriad of requirements.

Section 13, an amendment to section 18, and the replacement of Schedule 5 with a new Schedule 2, provides the entities with the ability to own and operate subsidiaries. As we understand it subsidiaries are a new concept that has been included in the Bill.

It would be useful to understand what is envisioned by providing for subsidiaries. We note that the entities can transfer infrastructure to the subsidiaries and subsidiaries are also able to pay shareholders a dividend. Where the shareholders are only the various Councils, the expectation would be that the dividends would be used to offset costs of the water entity or to invest in technology that assists the water services entities to achieve their objectives.

We are concerned with the ability to distribute dividends to other shareholders as this seems contrary to the intent of the public ownership model that has been communicated to date.

Part 6 - Provisions relating to water services infrastructure.

Subpart 1 provides for work on water services infrastructure on or under land (including Māori reservation and Māori land) and sets out the required processes before the work can be undertaken. We think there is an opportunity for improved drafting with these provisions to provide clarity and certainty of the process.

We generally agree with the points raised by Simpson Grierson in attachment one (Topic 3). We do not agree that the rights of appeal to the District Court or Māori Land Court should be removed.

We are not convinced that the tone and implications of these provisions will lead to the best outcome in terms of access and undertaking required works. Examples include a landowner being able to provide reasonable conditions, the heavy reliance on implied consent and the confrontational nature of court processes. The requirements do not seem consistent with a partnership approach under Te Tiriti o Waitangi.

From an iwi and hapū perspective, we understand that the terminology used is inaccurate in terms of who may agree to access and is used interchangeably specifically within sections 208 and 209. We understand that our iwi/hapū forums, Te Kāhui Mana Whenua o Tauranga Moana and Te Ihu o Te Waka o Te Arawa, will canvas this in their submission on the Bills.

The requirements for access and proposed works do not seem to have been considered in conjunction with any other regulatory requirements such as those under the current RMA (or proposed in the NBE). Given the myriad of requirements for consultation it would be logical to combine processes and requirements where possible.

We think there may be a drafting error in section 208. The section title references carrying out work under section 200(1)(a), but then goes on to say the section applies to work described in section 200(1)(a) where the land is owned by more than 10 people, and then references work carried out under section 200(1)(b) or (c) where the underlying land is marae, urupā, reservation, owned by 10 people. Should the section title only reference Section 200(1)?

Works under section 208 require a longer notice period and the notice requirements are more stringent but for marae, urupā, reservation, owned by more than 10 owners, these requirements only apply to (b)(c) which largely covers routine operational maintenance/renewal. We think that the more stringent requirements should also apply to the more significant capital works carried out under section 207.

Section 219(2) appears to be trying to bulk "legalise" historic water infrastructure that has been installed within land, potentially without all the right paperwork in place to prove that it was installed legally. This is not an appropriate mechanism to address this issue and could lead to further issues.

Section 224 applies if a water services entity is seeking to create an easement on the record of title in relation to land on which a marae or an urupā is situated or that is a Māori reservation. The section specifically directs that sections 315 to 326 will apply "*as if it were land to which Part 14 of that Act applies*". That is to say that the land will be treated as if it were Māori freehold land, Māori customary land or general land owned by Māori. We understand that these classes of land are offered lower protection from alienation than Māori Reservation land, which marae and urupā are often situated upon.

Council does not consider it appropriate to seek easements over marae, urupā or Māori reservation as it is wāhi tapu for Māori. In 2021, Council undertook to upgrade/establish wastewater connections for almost all the marae within our district. Where Council mains were installed on marae land, no easements were sought. Council considered that we could attain a similar level of protection of our assets by agreement with the marae trustees. This approach recognised both the need of the marae to have well functioning wastewater systems and that the land is taonga tuku iho for the mana whenua and will not be sold or transferred.

We suggest that section 224 is deleted, and **if** for some reason an easement is required, that this is sought in accordance with the current provisions of Te Ture Whenua Māori Act 1993.

Subpart 2 sets out the requirements for work on infrastructure on or under roads. Section 222 also provides for the road owner to require water services infrastructure to be moved. We support these provisions but would like to comment on alignment of works with other utility providers. We suggest that a clause is added requiring consultation with other utility providers when work is required on waters infrastructure on or under roads.

Part 7 – Controlled drinking water catchments

We support section 232(5) that requires engagement with territorial authorities, mana whenua, consumers, and communities in the service area.

There is potential for misalignment between the WSL Bill, spatial planning, and the relevant RMA processes in terms of designating a controlled drinking water catchment. We

understand the importance of protecting the source of drinking water. However, this needs to be considered in conjunction with planning for growth areas, stormwater management and other community needs such as recreation areas.

Part 8 – Transfer of small mixed-use rural water services

It would be useful to understand the rationale for the thresholds set out in section 234(a) and (b) in terms of total volume of water and the number of dwellings. This also leads us to ask if it should be an 'or' instead of an 'and' requirement to be eligible for the transfer of service. We are also unclear who would be considered the 'alternative operator'?

The need for a binding referendum under section 236 seems excessive and it appears that potential costs would lie with the relevant territorial authority (section 243). We submit that the costs of the referendum should be borne by the alternative operator.

Part 9 – Service provider and assessment obligations

We question the need for the assessments and the alignment with the WSE requirements to prepare Asset Management Plans and an Infrastructure Strategy. Will the assessments duplicate the information required?

If the assessments are considered necessary section 248 requires the regional representative group to review the proposed assessments within 30 days. We submit that this review period is extended to 60 days.

Fire hydrants are provided for under section 251 and 252. We submit that these requirements should be limited to urban areas or areas of high risk. To comply with the proposed sections would require most of our rural network to be replaced with bigger pipes that would not justify the risk. The position (and identification mark) of fire hydrants should be a consultation matter with the territorial authority and Waka Kotahi.

Subpart 3 – Trade waste provisions

We would draw the Committee's attention to the points raised by Simpson Grierson in attachment one (Topic 10).

In addition, we note that in the past some councils have incentivised economic development using discounts for trade waste. This ability is likely to be lost, despite understanding the potential wider benefits.

Subpart 4 – Water restrictions and consumer behaviour rules

The Bill proposes that the Board may make rules to restrict water usage and to regulate consumer behaviour. We support the engagement requirements set out in section 277 when developing the rules.

There are subsections which note that these rules do not apply to consumers who have entered into a commercial bulk supply agreement with the WSE. It is unclear who could enter into a commercial bulk supply agreement. Would Council be eligible for one? If so, how would this interact with our relationship agreement?

Subpart 6 – Rules regulating specified classes of work.

Section 285 provides for the Board to regulate classes of work in certain places e.g., near, under or above water, wastewater, or stormwater infrastructure. These rules may not conflict with the rights under s221 or s222.

It is unclear how these rules would interact with greenfield environments and potential future urban environments, the requirements under the NBEB and SPB, and any mixed-use situations including stormwater and recreation. Clarity is required to ensure that there is not a duplication of rules, or rules that are inconsistent and misaligned.

We support the engagement requirements set out in section 286 for creating the rules.

Part 10 – Water services infrastructure connections

This part sets out a three-stage approval process for connections to, or to disconnect from, water services infrastructure or to make structural changes that would affect water services infrastructure (sections 297 – 315). This process appears to be more onerous and time consuming than what currently exists and creates potential for confusion about who can give the required permission in terms of the Council's responsibilities under the Building Act and the responsibilities of the WSE.

It is also unclear how this interacts with the timeframes set out in the RMA and Building Act that we must comply with. Is this something that is to be addressed through our relationship agreement with the WSE?

There are also potential implications and additional costs for our community when Council considers works on existing community facilities or where a new building is proposed that requires connections. We note that there is an exclusion clause that applies in situations where the works are to be moved either in accordance with sections 221 or 222.

Part 11 – Charging

We would draw the Committee's attention to the points raised by Simpson Grierson in attachment one (Topic 6 and 7). We are concerned with the transitional issues identified with financial contributions and the water infrastructure contribution charges.

The WSE must provide the required information to Council to provide for the calculation of the rates rebates (section 318). We request that the timeframes are specified rather than the reference to the Rates Rebate Act 1973. We would also expect that this may be stipulated in our relationship agreement with the WSE.

Section 319 sets out that Council must supply the WSE information from the rating information database so that the WSE may charge consumers. Section 320 outlines the rating information that may not be withheld. We note that the WSE can liaise directly with DIA rather than Council having to provide this information. We request that the legislation is amended to reflect this.

The framework for setting charges is set out in sections 330 to 333 and includes charging principles such as promoting the efficient use of resources, and that groups who receive different levels of service pay different amounts. Section 334 allows for water service charges to be geographically averaged.

We question how these sections align with the regulation requirements in the WSEECP Bill and the role of the Commission versus the role of the WSE.

We also think that the current principles set out in section 331 may not enable the overarching goal of cross-subsidisation. As outlined in our submission to the WSEA we are concerned that the current lack of transparency around funding and charging will mean that our communities continue to pay higher levels of water charges, compared to others in the entity, but will not receive any increased benefit. This will negatively impact community response to the new entity from the start. A fast transition to equalised charging is required.

There is also a disconnect between section 330 and section 331. Section 331 sets out the charging principles but does not apply until the earliest of either a date appointed by the Governor-general by Order in Council or 1 July 2027 (section 331 (5)). It is unclear how or why the Board would set charges without the principles in place.

We would also draw the Committee's attention to the bespoke charging approaches that have been created over time for community benefit and to recognise the uniqueness of certain community infrastructure e.g., a reduced charge or remission for community halls and marae. We submit that these approaches are provided for by way of a grandparenting clause within section 331. There may also be a requirement to amend the WSEECP Bill to reflect this requirement.

Sections 336 to 338 deal with pass through billing where the WSE may authorise Council to collect charges. This would require Council to enter into a charges collection agreement with appropriate compensation. We note that there is no opportunity to opt out of this agreement.

Council is very concerned about this requirement. We believe that it will create confusion with our community as to who is providing water services, we are unconvinced that Council be adequately resourced and compensated for this role and concerned that it will negatively affect our other operations. It is also unclear if Council would be responsible for debt collection on behalf of the entity.

Stormwater charging is set out in section 340 with capital value as one of the criteria for determining the apportionment of the charge. It is not clear what the rationale is for using capital value rather than a set charge for stormwater. It seems to assume that there would be a greater level of service provided.

We also seek clarification that the roading network is exempt from stormwater charges. We would expect this to be the case.

Water infrastructure contribution charges are provided for in section 343. Section 344 sets out the principles for setting the charges, section 346 provides for the adoption of a policy and section 347 sets out the consultation requirements. The bill also confirms that Councils may no longer charge development contributions or financial contributions to fund water infrastructure held by the WSE post 1 July 2024. We note Simpson Griersons comments that the bill is unworkable or unclear regarding the transitional matters relating to water infrastructure contribution charges.

Council only utilises financial contributions and we are concerned that there may be complications for the District Plan post 1 July 2024 if the wording of the bill is retained. We also question how the charges interface with the NBE Bill.

We strongly object to section 348 which would exempt the Crown from paying charges.

Part 12 – Compliance and enforcement

We support the need for compliance and enforcement provisions noting that compliance powers should be consistent with the powers of Council officers.

We support the requirement to consult with Council and others when developing the compliance and enforcement strategy (s355).

The power to restrict water supply is provided for in section s363. Clarity is required as to what is meant by this section and whether it is the same as currently understood.

We seek clarity as to the responsibility for dangerous and insanitary buildings where this is linked to safe potable water or wastewater. Other matters where clarity is sought include the responsibilities under the Building Act where stormwater may runoff one building onto another, management of backflow, and the role of the regional council in compliance.

Under section 390(1) we submit that an additional clause should be added to provide for enquiries on land use and private networks to determine backflow risk.

We submit that under section 391 an additional clause should be included to make it an offence to take water from an established infrastructure network or use it without permission (similar to provisions for the electricity sector).

Section 35A provides for the WSE or regional council to warn users of domestic self-supply about contamination. We query how either of these parties would know that there was

contamination and if they have the required authority in place under the Bill to access the land and take samples.

Part 13 – Miscellaneous provisions

We support the intent and requirements as set out in sections 467 to 469 regarding relationship agreements. We note that section 469 seems to imply that these agreements are to operate on a 'good faith' basis and may be unenforceable. This is of concern as these are seen as the fundamental agreement between the WSE and Council.

Relationship agreements must be completed on or before 1 July 2024. It will be challenging to complete these agreements within this timeframe, and we consider that there are matters that we won't be able to address by the deadline. Examples include how the complexities of stormwater will be managed, charging matters including transitional arrangements and costs.

Subpart 5 sets out requirements for the WSE to provide information for land information memoranda and project information memoranda. We question why Councils would have a responsibility to provide information regarding the WSE on LIMS. This is not a requirement in respect of any other network provider.

If the legislation is not amended to remove this requirement, we suggest that the WSE must provide the required LIM information within 50 percent of the statutory working days. There would likely need to be some consequential amendments to LGOIMA as it currently relates to information that we hold. Other issues we anticipate are who bears the responsibility and liability for timeframes and accuracy of information.

Section 439A sets out that Council must obtain the agreement of the WSE regarding certain powers relating to stormwater networks and drains. There is no reference to the Drainage Act in the Bill. Does this legislation supersede the Drainage Act? This may limit the WSEs ability to decide whether a drain is public or private.

We generally support subpart 12 regarding the proposed amendments to the LGA 2002. This includes changes to the sanitary service assessments (s124 and s125) and changes to the bylaw making powers under s146 (noting that in Schedule 1, new Part 2 of the WSE Act, there is the ability to revoke or amend certain bylaws without the need for consultation).

Schedule 10 has also been amended to reflect that water services are no longer groups of activities. With the reduced number of groups of activities, we question whether there is still a valid requirement for Councils to prepare an Infrastructure Strategy. There is the potential for the requirements currently sitting within the Infrastructure Strategy to be included by amending the content requirements of a Long-term Plan.

Schedule 1 – new Part 2 of the WSE Act

This part provides further provisions for the transfer of assets, liabilities, and other matters related to the operation of the WSE. This includes payment of water services debt to Council (section 54), that the WSE will adopt model instruments, that the WSE will adopt existing growth charges policies and tariff or charges structures of a territorial authority, the transfer of development contributions or financial contributions required for water services infrastructure, charging Council for stormwater services, and that Council can revoke relevant bylaws.

We would draw the Committees attention to Topic 11 and 12 in attachment one. We note that there are a number of issues to be resolved to provide clarity, fairness and reduce legal risks.

We request that a 'saving grace' clause be added to cover incorrect assumptions made in the transfer of assets and liabilities. This could cover a three-year period from 2024 to 2027.

The bill provides a definition for mixed use assets. We ask that Council is able to retain the right to determine the primary purpose of a particular asset e.g., where there is a parcel of land that is used as a recreational reserve or cycleway but also provides overland flow paths for stormwater.

The WSE also needs to consider shared use in the development of future water assets, where the community can use these assets for recreational purposes e.g., pedestrian bridges that carry a water main.

We would support the inclusion of sections to provide for a mediation process if Councils and WSEs cannot agree on the debt or other matters to be transferred.

Water Services Economic Efficiency and Consumer Protection Bill submission points and proposed amendments

General comments

We question whether the level of regulation meets the intentions to create an efficient and effective framework for the provision of water services. There also appears to be a duplication, in part, between what the water service entities themselves can do and what would be undertaken by the Commerce Commission. There also seems to be a crossover of purpose with Taumata Arowai and the proposed Water Services Commissioner.

To date the communication (and legislation) has indicated that the Water Service Entities would be fully functional from 1 July 2024. This does not seem to be reflected in requirements within this Bill but also the Water Services Legislation Bill. We have noted this above and reiterate it here that this issue is particularly noticeable regarding the provisions for pricing and charging where there is an expectation that local Councils will continue to provide this service for the water service entities.

Part 2 - Price and quality regulation

We are concerned with the purpose statement and note the comments made by Simpson Grierson. We agree that s12 should be amended to reflect the other drivers of quality for water infrastructure services and that as shareholders of a water services entity our motivation will not be the pursuit of profit but will continue to be the provision of quality water services with cost effective prices.

Subpart 3 sets out the detail of input methodologies including what matters can be covered (s27). Section 28 provides for consultation with 'interested parties' before finalising the methodology. It is unclear who would be considered an 'interested party'. We seek that at a minimum Council, developers, road controlling authorities, and other utilities authorities should be consulted.

Changes to input methodologies are provided for in s30. Non-material changes can be made without complying with s28. It is unclear what is intended by 'non-material changes'.

Section 39 sets out how a section 15 determination must specify the quality paths that apply to each WSE. Section 39(3) has a long list of what a quality path may include and seems to duplicate the requirements for a WSE that are set out in the WSEA. It is unclear whether the WSEA or the Commission (via the WSEECP Bill) determines what is required of the WSE. The same issue arises for the section 15 determinations for price-quality path requirements (section 42).

If the Commission is delayed in the preparation of either (or both) the methodologies or regulations, this is likely to have an impact on the effective implementation of the WSEs

and a potential negative effect on consumers. There may also be implications for Council if there are still components of water services that Council is effectively still running?

We support sections 43 and 44 that provide for 'wash up' mechanisms and smoothing of revenue and prices. However, we reiterate our point that price equalisation should occur from day one.

Part 3 – Consumer protection

We support the intent of section 60 'to provide for consumer protection and improvements in the quality of service provided to consumers by regulated water services providers and drinking water suppliers'. This is achieved by requiring the Commission to make a service quality code and providing a complaints process and establishing a consumer dispute resolution service (s76). It is unclear how section 60 aligns with what the WSEs may wish to do in respect of managing complaints.

We think it would be useful to have national metrics that all WSEs will have to comply with.

Part 4 – Enforcement, monitoring and appeals.

We seek clarity to understand if Councils would be treated the same as a regular consumer (despite what may be set out in a relationship agreement with the WSE). At this stage we can not comment on what our preferred approach would be.

It is unclear if Council would have any liability arising through building consent processes related to water, wastewater and stormwater, the management of discharge from roads, and the interface with overland flow paths and landform approvals. This reinforces our initial comments relating to the clarity of roles, responsibilities, and functions.

Part 5 – Subpart 1 – Water Services Commissioner

We are unclear how the role of the Water Services Commissioner and Taumata Arowai will interact and what the Commissioner may or may not do. We are concerned that this creates additional costs for the community and water users.

Yours sincerely,

James Denyer
Mayor
Western Bay of Plenty District Council

Simpson Grierson submission points

Topic 1: Water services functions remaining with councils

Summary of key points

- Fundamental question whether stormwater functions should transfer to water services entities (**WSEs**), at least at this time, should be reconsidered, given complications associated with transfer of stormwater services and the risk of a disconnect with land use planning which remains a council function
- If stormwater function is transferred to WSEs, Bill should have clear statement of what water services functions remain with councils, which seem to be:
  - stormwater outside urban areas (although proposed section 261 Water Services Entities Act 2022 (**WSEA**) envisages councils having urban stormwater networks)
  - transport stormwater systems
  - agricultural and horticultural (cf drinking) water
  - regulation of private drainage and nuisances
  - land drainage and flood control
- Definition of *transport stormwater system* and interface with WSE's *stormwater network* (from which transport stormwater systems are excluded) is problematic and requires clarification
- Bill also needs to address combined sewers in the context of transport stormwater systems
- To support residual council functions the Bill needs to reinstate:
  - the power to require development contributions for agricultural water supply and stormwater drainage provided by the council;
  - the power under section 181 of the Local Government Act 2002 (**LGA02**) to construct works on private land for stormwater (including transport stormwater systems);
  - express power to make bylaws relating to transport stormwater systems
- Bill should include a clear statement of what private drainage functions continue to be exercised by councils
- Reconsider desirability and workability of Bill's proposal that councils continue to exercise certain Local Government Act 1974 (**LGA74**) private drainage functions, given their close connection to the WSE's functions
- Circumstances in which a council has to obtain WSE consent before exercising LGA74 powers is uncertain and only applies to stormwater (and not wastewater), rationale for this is unclear
- Proposed amendments to the Health Act 1956 do not include reference to wastewater but only to water supply or stormwater. The rationale for this is also not clear

Discussion

Water services functions remaining with councils

1. The Bill would benefit from a provision which clearly states what water services functions may continue to be exercised by councils - either because they will not pass to WSEs or because councils may to some extent still exercise the function alongside the WSE. At present it is necessary to determine this through a process of interpretation of the definitions in the WSEA, including the proposed amended definitions of "stormwater network" and "water supply", and by inference from other sections in that Act. This leaves uncertainty in this very important area.

2. For example, WSEs have the function of providing water services in their areas (section 13 WSEA), which are water supply, wastewater and stormwater. The proposed amended definition of "water supply"[1] excludes water supplied for agricultural or horticultural purposes unless supplied by the WSE, and proposed amendments to the LGA02 (in Part 1, subpart 12 of the Bill) indicate that councils will still have the function of agricultural and horticultural water supply. However this is not directly stated.

3. In the case of stormwater, the WSEA's definition of "stormwater network" is limited to WSE infrastructure in an urban area (although it includes an "overland flow path" as defined in section 6 – see further below). Therefore, the understanding is that stormwater outside urban areas will remain a council function, notwithstanding that the WSE's statutory stormwater function applies to its entire service area.

4. Other provisions in the Bill, for example proposed sections 260 and 261 of the WSEA, envisage that councils and CCOs may also own stormwater networks in urban areas (which may connect to or discharge into the WSE's network), and proposed amendments to council regulatory powers (e.g. the bylaw-making powers in section 146 of the LGA02 – see clause 99 of the Bill) are consistent with a general on-going council role in relation to stormwater. Again, however, this is not express.

5. The Bill also proposes excluding "transport stormwater systems" from the definition of "stormwater network", presumably on the basis that these systems will remain the responsibility of the relevant transport corridor manager, although this is not stated either.

6. It would be helpful for the Bill to clearly set out what the respective roles and functions of WSEs, councils and transport corridor managers are in relation to stormwater, rather than this being left to interpretation. Such a statement would also help in interpreting other provisions which involve the use of powers relating to stormwater.

Relationship between transport stormwater systems and WSE's stormwater network

7. The definition of "transport stormwater system" (clause 5 of the Bill) and the interface between such a system and the WSE's stormwater network (from which transport stormwater systems are excluded) is problematic. The definitions need refinement to avoid practical problems and, potentially, disputes as to where responsibility lies.

8. To take an example, a road may discharge to a stream or drainage channel located within the road corridor. That stream/channel would presumably be "green water services infrastructure", and part of a transport stormwater system for which the transport corridor manager remains responsible, and not part of the WSE's stormwater network.

9. But at some point along its length that drainage channel or stream may no longer be in the road corridor or part of the transport stormwater system, and become part of the stormwater network for which the WSE is responsible. Under the Bill, this dividing line is unclear. This is in part because 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: i.e. the infrastructure (including green water services infrastructure) will not necessarily be located within the transport corridor. The same applies to overland flow paths, which could arguably be part of the "transport

1 This amendment proposes inserting a new paragraph (c) in the definition of "water supply", whereas there is already a paragraph (c). It is assumed the intent is to replace the existing paragraph (c).

stormwater system" or part of the "stormwater network", and are expressly referred to in both definitions.

10. Under the definitions, in order for infrastructure to be part of the transport stormwater system, and excluded from WSE's stormwater network, it is sufficient for it to be a "process" used by a transport corridor manager to deal with stormwater "affecting" a transport corridor. There is no requirement that the infrastructure be located within the road corridor. Therefore, both upstream and downstream of the road corridor, infrastructure could be regarded as part of the transport stormwater system if it is being used by the transport corridor manager e.g. to divert or manage the stormwater before it reaches the road, or to drain or treat it after it leaves the road.

11. As a related point, the Bill does not address the situation of combined (wastewater and stormwater) sewers and roads. It seems that if a combined sewer is located within a road and drains stormwater from that road it is part of the transport stormwater system, notwithstanding that councils and transport corridor managers do not otherwise have wastewater responsibilities. The position of combined sewers, and who has responsibility for them when located within a transport corridor such as a road, needs to be covered the Bill.

Whether responsibility for stormwater services should be transferred to WSEs at all, at least at this time

12. As illustrated by the above discussion, there are particular complications with transferring responsibility for stormwater services to WSEs which do not apply to water supply and wastewater. These difficulties do not seem to have been fully worked through in the Bill. It may be imprudent to transfer stormwater functions to WSEs at this time, without fully considering such matters.

13. Some components of the "stormwater network" as defined perform various functions not limited to stormwater e.g. urban streams also have an ecological and recreational function. Councils have a legitimate interest in continuing to be involved in managing and regulating such infrastructure. The same rationale for excluding transport stormwater systems (namely that roads in particular serve a dual transport and stormwater function) would seem to apply to them. See also paragraphs 39 to 46 below, in the context of stormwater management plans and rules.

14. In our submission the fundamental question whether stormwater should transfer to WSEs, at least at this time, needs be reconsidered. This should take place in the context of a full understanding of all of the implications of such a change, and how the proposed new system can operate effectively, side by side with council functions and responsibilites.

Council powers under the LGA02 and elsewhere relating to their residual water services functions

15. The Bill appropriately repeals council powers which will no longer be necessary once water services functions transfer to WSEs. However, in places it seems to 'forget' that councils will have some residual water services functions, and will still need access to statutory powers for those purposes. Based on the discussion above (and ideally confirmed by a clear statement in the Bill) these residual functions appear to be:

    - stormwater services and associated infrastructure, including transport stormwater systems;

- land drainage and flood control, to the extent this overlaps with stormwater;
- certain powers in relation to private drainage – in the Health Act 1956 and LGA74 (see immediately following sections of this submission); and
- water supplied for agricultural or horticultural purposes.

16. As such, the following powers (which the Bill proposes removing) should be reinstated:

    (a) the power to recover development contributions for the above infrastructure. Clause 106 of the Bill proposes replacing the definition of "network infrastructure" in section 197(2) of the LGA02 to read "the provision of roads and other transport (including transport stormwater systems)". It should include agricultural water supply and council stormwater infrastructure;

    (b) the power to construct works on private land in section 181 of the LGA02 should also extend to works considered necessary for stormwater (including transport stormwater systems) – refer clause 103 of the Bill.

17. The proposed amended bylaw-making powers in section 146 of the LGA02 (refer clause 99 of the Bill) do include powers relating to agricultural water and stormwater drainage, which is supported. However it would be desirable for this to expressly include transport stormwater systems, to remove any uncertainty.[2]

Powers under the LGA74 in relation to private drains

18. Council powers in relation to private drains (both wastewater and stormwater) are found in the LGA74. The Bill does not remove these powers, but requires a council to obtain the WSE's agreement before exercising some of them (proposed new Part 25A LGA74). The Bill does not confer equivalent powers on WSEs.

19. The intent and effect of this new Part 25A, and in particular the residual role of councils in this area, is insufficiently clear. The Bill would benefit from a clear statement as to what LGA74 private drainage functions and powers councils are still responsible for exercising, and whether there is there a division of responsibility between council and WSE or an overlap.

20. Under the Bill, councils retain their powers relating to private drainage e.g. to require a property to be properly drained or to require separation of combined sewers, and WSEs do not. There is a question mark over how workable this will be given the very close connection to WSE's functions and responsibilities – i.e. private drains must connect into the WSE network and satisfactory provision of water services (by the WSE) depends on adequate private drainage as well.

21. Even if these powers are to stay with councils, the Bill does not include a mechanism for WSEs to request or require their use in appropriate circumstances. The Bill adverts to councils contracting with WSEs in relation to water services and LGA74 powers (new section 468A(3)), but it is doubtful whether such a contract could include regulatory matters such as the section 459 power to require private drains or the section 468(1) power to require tree root removal.

2 The opportunity could also be taken to tidy up section 146(a) which separately lists both "waste management" and "solid wastes", when these are the same thing.

22. The threshold in the new section 439A of the LGA74 for a council to obtain the agreement of the WSE – if "a stormwater network or stormwater management plan would be affected" – is also problematic.

23. In the first place, the test is somewhat vague – when is the network or management plan "affected"? The exercise of private drainage powers can be controversial and opposed by landowners; uncertainty as to when WSE agreement must be obtained will add to the risk of challenge.

24. Secondly, the new section 439A of the LGA74 limits the WSE's role to stormwater effects, even though council private drainage powers apply to wastewater as well. It is unclear why this is the case.

Health Act functions in relation to water services

25. The proposed amendments to sections 33 to 35 of the Health Act, applying relevant provisions to WSEs, do not include reference to wastewater but only to water supply or stormwater drainage. Again the rationale for this is not clear, as the nuisances in section 29 of the Health Act could also include wastewater issues.

More detailed recommendations

Provision	Recommendation	Reason
Clause 5, section 6 WSEA, definition of *transport stormwater system*	If intent is the restrict *transport stormwater system* to infrastructure within the road or other transport corridor, amend definition: (a) means the infrastructure owned or operated by, or the processes used by, a transport corridor manager to collect, treat, drain, store, reuse, convey or discharge stormwater ~~affecting~~ in a transport corridor; and (b) …	Greater clarity as to demarcation between transport stormwater system and WSE stormwater system Addition of "convey" for completeness.
Clause 99, amendment to section 146 of the LGA02	Amend section 146(b)(iv) as follows: …(iv) stormwater drainage, including transport stormwater systems, provided by the territorial authority…	For avoidance of doubt
Clause 103(1), amendment to section 181(1) of the LGA02	Amend as follows: A local authority may construct works on or under private land or under a building on private land that it considers necessary for: (a) the supply of agricultural water; (b) stormwater drainage, including transport stormwater systems; (c) land drainage and rivers clearance	Necessary for section 181 powers to extend to all residual council stormwater infrastructure
Clause 106, new definition of *network infrastructure* in section 197(2) LGA02	Amend as follows: **Network infrastructure** means the provision of roads and other transport ~~(including transport stormwater systems)~~, agricultural water supply, and stormwater collection and management (including transport stormwater systems)	Necessary for DC powers to extend to all all residual council stormwater infrastructure

Topic 2: Proposed regime strays into land use planning

Summary of key points

- Bill should include a clear statement (in either the WSEA or the Bill's provisions) that WSEs are "plan takers", as opposed to "plan makers"
- Select Committee should reconsider the extent to which WSEs are empowered to develop and adopt plans, strategies and rules that overlap with land use planning and regulation, which is properly the function of councils
- Bill should make it clear that WSEs are required to comply with any applicable regional plan and district plan rules
- Reconsider the definition of "urban area" to ensure that future development areas are not captured in WSE plans until such time as land is ready for release / development
- Bill lacks an integrated relationship with either the Resource Management Act 1991 or the proposed Natural and Built Environment Bill and Spatial Planning Bill

Discussion

Plan-takers, not plan-makers

26. Through the development of the WSEA, the Select Committee report sought to clarify that the WSEs were to be "plan-takers", and not "plan-makers".[3] The outcome of this clarification was to amend clause 12(d) of the WSE Bill so that the section as enacted reads "support and enable planning processes, growth, and housing and urban development".

27. Not only is there no discernible hierarchy within section 12 (which states the objectives of WSEs), there is no clear hierarchy within paragraph (d) of the section. The objective of supporting and enabling planning processes is placed on an equal footing with enabling growth, housing and urban development, which does not give any precedence or greater importance to local authority urban growth strategies or plans.

28. The concern expressed through submissions on the first Bill remains live, and it would be an improvement to the Bill if there were a clear statement that the WSEs are not empowered to stray into "plan-making". In conjunction with this, there should be a clear requirement in the Bill that states that the WSEs must observe and adhere to any regional and district plans and strategies, rather than enabling and supporting planning processes only. This change could potentially be introduced into the operating principles of WSEs (in section 14 of the WSEA).

Overlap with land use regulation

29. The Bill empowers WSEs to prepare a wide array of documents, including controlled drinking water catchment areas and plans, stormwater management plans (**SWMP**s) and rules, water services assessments. The scope of these documents may extend beyond three water service delivery and into land use regulation, a core council function. This leaves the potential for overlap between the two, creating uncertainty in terms of land use regulation and enforcment, which is undesirable.

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3 "Clause 11 sets out the objectives of WSEs. We consider that the bill should be clear that the entities' role would be to support planning processes as "plan-takers", rather than "plan-makers" (that is, territorial authorities would retain control over planning, and WSEs would give effect to their plans). To address this, we recommend amending clause 11(c) so that the objectives of WSEs include supporting and enabling planning processes, growth, and housing and urban development...." Water Services Entities Bill 136-2 (2022), Government Bill Commentary – New Zealand Legislation

Controlled drinking water catchment areas and plans

30. Proposed sections 231 and 232 provide for the designation of a controlled drinking water catchment area, and the issue of a plan for any such area. There is no clear purpose statement for either matter, which would assist to clarify the scope of the powers.

31. A plan, issued under proposed section 232, is allowed to "set out prohibitions, restrictions, or requirements relating to… activities that may be undertaken in the area" (see proposed section 232(2)(b)). This power directly engages with land use regulation, which is the role of councils under the RMA.

32. The Bill should make it clear that the ability to prohibit, restrict, etc any activities should be limited to the purpose of protecting the drinking water catchment as a water source. If expressed in that way, the potential overlap with land use regulation will be narrowed, which will assist with administration of any plan.

33. As drafted, it is not clear from the Bill how the provisions for establishing a controlled drinking water catchment area interact with regional and district planning rules, or the National Environmental Standards for Protecting Sources of Human Drinking Water. In the case of any conflict, a clear statement may be needed to provide that rules and standards with an RMA foundation will prevail.

34. With reference to proposed section 231, and the designation of catchment areas, there is no requirement for the WSE to give reasons for any designation. This should be addressed alongside a new purpose provision, that guides when and why designations should be made.

35. In addition, because any non-WSE owner will need to consent to both a designation and a catchment plan, there should be a requirement for the WSE Board to provide reasons in support of the exercise of its functions under sections 231 and 232.

36. There is also a drafting issue to address with proposed section 231. The wording used in that clause is that a WSE "may, by notice, designate". This language differs from that used in other legislation that confers powers to make declarations relative to land (e.g. Reserves Act 1977 and Public Works Act 1981). That other legislation typically provides for the issuing of "declarations by notice in the Gazette". As the same publication requirements are intended to apply, the wording in section 231(1) should reference the same "declaration" process. This change would also remove any confusion with the RMA concept of a designation (as the WSEs will be requiring authorities with those functions).

37. In order to improve administration, the proposed new section 232(5) should be amended to take into account the possibility that WSE assets may be located outside its service area.

38. We also note that proposed section 226 of the Natural and Built Environment Bill requires consideration of source water risk management plans under the Water Services Act 2021, when considering resource consent applications. There is a need to ensure alignment between all of the planning and existing legislative requirements relating to source water and drinking water catchments, and it would be beneficial for the terminology to be consistent.

Stormwater management plans and rules

39. The SWMPs provided for under proposed section 256 create the potential for WSEs to stray into land use planning and regulation. The Bill should be amended to clarify that a

SWMP is not a regulatory document, and to require that any SWMP must be consistent with key documents in the RMA planning hierarchy e.g. spatial plan, regional plan and district plan.

40. Of particular concern is the potential that an SWMP may include and set strategic intentions that will impact on later land use planning processes. The reason for this concern is that the proposed section 254 states that the purpose of a SWMP is to provide a WSE with "a strategic framework for stormwater network management". This wording is broadly expressed, and if given regulatory effect through stormwater network rules, may act to constrain urban policy planning, and growth strategies.

41. Proposed section 256 provides a further cause for concern in that it allows a SWMP to "state the outcomes that the water services entity wants to achieve". This again relates to policy matters, and tends to suggest that the WSE is a plan maker rather than plan taker.

42. "Stormwater network" is defined in section 6 of the WSEA as meaning the "infrastructure owned or operated by, or processes used by, a water services entity to collect, treat, drain, store, reuse, or discharge stormwater in an urban area". The Bill proposes adding a definition of "urban area" to the WSEA that, by referring to land "primarily zoned, **or intended to be used for**, residential, industrial, commercial and mixed use, or settlement activities", would include land identified in district plans as "future urban". It is submitted WSEs should not have responsibility for stormwater services in these areas, which will not be "development ready". The provision of infrastructure to such land needs to be integrated and carefully managed by councils', rather than led by the WSE. Stormwater functions for future urban land should (which is typically rural) should remain with councils, consistent with the exclusion of rural zoned land from the proposed definition of urban area.

43. We note that proposed section 255 requires that a WSE "must" comply with its stormwater management plan. This mandatory direction could prove problematic if the SWMP contains detailed policy and outcomes that must be adhered to. Unless there is a requirement for the WSEs to adopt and follow existing RMA planning undertaken by councils, there is no certainty that the SWMP process will not conflict with other forms of strategic planning.

44. Similarly, the provision to make stormwater rules in proposed section 260 does not have a clear relationship with RMA planning documents, yet it provides an ability to set restrictions, requirements, conditions on discharges and works in certain areas, and also set quality standards for discharges. Clarification of this relationship is particularly important given the clear intention that stormwater rules are to have regulatory effect. Section 260 lacks any purpose provision, or link to the SWMP which provides the foundation for the rules. This disconnect should be addressed.

45. Proposed section 260(2) states that certain stormwater rules "may not conflict with or restrict the rights or obligations of landowners or road owners under section 221 or 222". However, those two sections are in themselves misconceived insofar as they allow a land owner or road owner to "require" the WSE to move water services infrastructure. As discussed below, landowners and road owners should not be given "rights" or obligations under these sections, let alone rights/obligations that prevail over stormwater rules.

46. Proposed section 262 requires engagement with councils when making stormwater rules, but there is no legislative direction that addresses alignment between rules and existing RMA planning methods. If the WSEs are to be empowered to make rules in this way, the

Bill should be amended to include a specific purpose for any rules, and a requirement to remain consistent with rules under the RMA and the future Natural and Built Environment Act.

Water services assessments

47. In relation to water services assessments, planning for the water services needs of communities should be closely linked to the planning activities undertaken by councils, for example planning for urban growth and the potential managed retreat from coastal inundation. This link is necessary to achieve coordination between key stakeholders, and avoid inefficiencies created by non-integrated planning. There is a clear need for greater council participation in water services assessments than simply being invited to 'participate' (proposed section 247).

48. Although section 247(2)(d) proposes that an assessment could be carried out by a council on behalf of the WSE, most councils will no longer have the appropriate staff resources to carry out a full assessment. That said, council planning staff should play a key role in this process.

49. There would be benefit in the Select Committee ensuring that the water services assessment process is aligned with planning processes under the RMA, and the processes that are proposed to be introduced through the Natural and Built Environment Bill and Spatial Planning Bill (currently being consulted on), which are intended to replace the RMA.

50. In particular, the 'access' assessment should be formally linked to the regional spatial strategy process, to achieve collaborative input on general community needs, and specifically adopt a shared set of assumptions (about population growth and changes etc) that would be used by both councils and WSE.

Interplay between RMA processes and the Bill

51. In general, there is a lack of integration between the functions and powers conferred on the WSEs and the RMA and its processes. The Select Committee should ensure that the WSE's functions complement those of the council, in its regulatory or consent capacity, rather than potentially creating tension between them. One example of tension is through the three-stage approval process for connections, which provides the WSEs with a broad power to approve a number of aspects associated with new connection applications. To the extent that those aspects capture design, and integration with existing environments, it is considered that they extend into the realm of councils functions under section 31 of the RMA. It would be helpful for the Bill to clearly set out what the respective roles and functions of WSEs are in relation to such approvals, relative to councils, so that there is reduced scope for disagreement between these two key stakeholders.

More detailed recommendations

Section of WSEA	Recommendation	Reason
Section 6	Amend (b) in the definition of urban area so that it does not include any area notified by a territorial authority to the WSE under section [x], and provide a corresponding section giving territorial authorities that notification power. Alternatively, delete in (b) the words "or	Reduce potential demand on councils to develop land, and allow councils to plan infrastructure provision

	intended to be", so as to exclude future urban zoned land from the definition of "urban area".	in future urban zoned land.
Sections 13/14	Add function and/or operating principle that WSE's must observe and adhere to existing RMA planning rules and strategies.	Consistency with Select Committee findings
Section 231	Add purpose statement for controlled drinking water catchment areas.	Clarity and to improve operation.
Section 231	Relabel designation to 'declaration', and include a requirement to provide reasons for making a designation. Amend the wording in section 231(1) to refer to "may, by notice in the Gazette, declare the following"…	Reduce litigation risk Clarity of terminology
Section 232(5)	Amend s232(5) to add the underlined wording: "(5) When developing a controlled drinking water catchment plan, the board of the water services entity must engage with the territorial authorities, regional councils, mana whenua, consumers, and communities in (and where appropriate outside) the service area of the entity in accordance with section 461."	Clarify position where assets are outside WSE service area
Section 256	Amend this section to *establish a relationship between SWMPs and local government planning processes and include a requirement that they be consistent with these plans*	
Section 260	Add a purpose statement for stormwater network rules	Clarity and to improve operation.

Topic 3: WSE powers to carry out works on land (Part 6, sections 200 to 230 WSEA)

Summary of key points

- Water services infrastructure and WSEs are materially different from private utility operators (such as gas, electricity and telecommunications):
  - water supply and wastewater services are essential to life, with potentially significant public health implications if necessary works are delayed;
  - WSEs are public or quasi-public bodies, with public accountabilities;
  - compared to other utility operators, WSEs will have greater recourse to statutory powers because of specific locational requirements e.g to rely on gravity, and because existing infrastructure is often on private land, dictating the location of repairs, maintenance and replacement
- Proposed Part 6 powers, based on legislation applying to private network utility operators, are not fit for purpose and will risk significant delays and costs in obtaining approval
- Instead, Part 6 should replicate existing council powers and processes for works on land in LGA02

- Provide greater statutory guidance as to what are "reasonable conditions", including confirmation that issues of compensation are excluded and addressed under a separate process
- Remove the rights of appeal from a District Court or Maori Land Court decision under Part 6, and provide that those Courts' decisions are final
- Provide a fairer costs regime where a road owner requires water services infrastructure in the road to be moved, including WSE responsibility for costs if the infrastructure is or has become dangerous or unsafe.

Discussion

Works on private land - WSE regime based on private utility provider model

52. The model adopted in the Bill is largely based on that applying to gas, electricity and telecommunications providers under their respective Acts. This is not the appropriate model for WSEs, given the nature and location of the infrastructure which will be vested in them, the significance of the services which they will provide, and the public or quasi-public nature of the WSEs themselves.

53. WSE powers to carry out works on land must be fit for purpose, which means a regime which is much closer to that currently applying to councils.

54. Key differences between the rights and processes applying to councils (in section 181 and Schedule 12 of the LGA02) and that proposed for WSEs are:

    - under the Bill, the onus is on the WSE to obtain "approval" from the District Court if an owner does not consent or imposes unreasonable conditions cf under the LGA02 it is the landowner who must appeal. In the case of new works, this applies even if the landowner does nothing at all in response to a notice. This reversal of the practical onus together with delays of District Court referral will place significant practical impediments on WSE works being approved and carried out in a timely fashion;

    - the requirement that works can only proceed in accordance with a landowner's reasonable conditions (unless modified by District Court on appeal) assumes that landowners will be equipped to determine what is "reasonable" and advise accordingly. But in many private situations landowners will have no experience of such matters and what is or is not likely to be justifiable. Nevertheless the process will be delayed while the WSE is required to take the matter to the District Court.

55. Overall, this is likely to result in a significantly greater number of works having to be approved by the District Court, either following an application by the WSE or an appeal against unreasonable conditions. This will mean increased delay and cost, negatively impacting on the speed and efficiency in delivering water services infrastructure.

56. There are various reasons why water services are not just "another utility" like gas or telecommunications, and therefore justify a bespoke approach.

57. First, the relative importance of water services, as compared to, say, telecommunications, is self-evident, and illustrated by the Water Services Act and the WSEA themselves. Efficient and effective water supply and wastewater services are essential to life, with significant public health implications if they are impaired, which includes where necessary works are delayed.

58. Secondly, WSEs (unlike gas, electricity or telecommunications providers) are quasi-public bodies, with detailed public accountabilities. In that regard they are more akin to councils than to private companies.

59. Thirdly, there are unique characteristics of water services networks which mean a greater potential need for recourse to statutory powers as compared to other utilities. The existing networks which WSEs will assume responsibility already, in many instances, pass through private land. This determines the location of repairs, maintenance or replacement of that infrastructure, but that layout also influences the location of future works, as do other practical requirements unique to water and wastewater e.g the reliance on gravity wherever possible (for engineering, cost, environmental and resilience reaons) to convey water, wastewater and stormwater.

60. The fact that WSEs will need to use the statutory processes more than other utility operators counts in favour of a more streamlined procedure. The existing LGA02 procedure is familiar, and while not perfect, is satisfactory in most cases, and is an appropriate model.

61. Using a regime which more closely mirrors the existing LGA regime would not mean any reduction in the protection of private rights – the WSE would still need to justify its position before the District Court if necessary. But the altered process would reduce the risk of unnecessary delays because of landowners who either choose not to participate at all or who act unreasonably.

62. Even if (contrary to what is submitted above) the powers and processes in proposed Part 6 are broadly retained, there are some specific aspects which require further consideration:

    (a) under proposed section 200(5)(a), the WSE's powers to carry out works on someone else's land does not apply to Crown land. This is a significant limitation for which there is no obvious justification - if anything, Crown land should be regarded as more suitable for WSE works than private land. It is submitted that section 200(5)(a) should be deleted;

    (b) it would be valuable for the Bill to confirm that "reasonable" conditions may not relate to questions of compensation, which is a separate issue dealt with elsewhere (proposed section 218), if that is the intent. Experience shows that reaching agreement about works on private land can often founder on the issue of compensation, even if not strictly relevant because the legislation provides for full Public Works Act compensation under a separate process;

    (c) the subpart 5 appeal rights from the District Court or Maori land Court (proposed sections 227, 228 and 2306 to 230) are too extensive. The matters being referred to those Courts, either be application or appeal, are essentially factual in nature, involving an assessment of the necessity of the works in that location, the impact on the landowner and the reasonableness of conditions. This is suitable subject matter for the District Court or Maori Land Court, as the case may be, and the Bill should provide that the decision of those courts is final. At present, under Schedule 12 of the LGA, the District Court's decision is final.

WSE infrastructure on roads (subpart 2)

63. WSEs are given powers to carry out works in roads. WSEs will become "utility operators" (clause 184 of the Bill) and therefore the regime in the Utilities Access Act 2010 (**UAA**),

including the Code of Practice under the UAA and the identification of reasonable conditions, will apply.

64. Proposed section 222 of the WSEA addresses the situation where the road owner or transport corridor manager requires the water services infrastructure in the road to be moved. This provides that the reasonable costs of such work is payable by the road owner or corridor manager. This could work unfairly if the need for the alteration or removal is something which is the WSE's responsibility e.g. if the infrastructure is or becomes dangerous or unsafe.

65. It is recommended that section 222 be amended to more fairly reflect where the costs should lie in various scenarios. A useful model may be section 147B(2) of the Telecommunications Act 2001.

More detailed recommendations

Provision of WSEA	Recommendation	Reason
Sections 200(2), 210, 202, 203	Replace with process modelled on LGA02 section 181 and Schedule 12. In particular, put onus on the landowner to challenge proposed works/conditions in the District Court, not on WSE to obtain District Court approval	Significantly limits WSE performance
Section 200(3) [if not replaced as submitted above]	Clarify scope and subject matter of possible "reasonable conditions", including that issues of compensation are excluded	Current wording greatly increases likelihood of landowner imposing unmeritorious conditions - necessitating lengthy and costly court process
Section 200(5)(a)	Delete	Excluding Crown land as site of potential works unduly limits WSE's ability to choose best location
Section 226 to 230	Delete appeal rights to High Court, Court of Appeal, Supreme Court and Maori Appellate Court in sections 227, 228 and 230. Provide instead that decisions on applications or appeals to District Court or Maori Land Court are final.	Public interest in relatively short process and finality. District Court and Maori Land Court well equipped to decide issues.

Topic 4: Connection to water services infrastructure (Part 10, sections 288 to 317 of the WSEA)

Summary of key points

- Provide express statutory linkages between 3-step water services connection approval process and relevant resource and building consent application processes, in order to encourage and facilitate coordination and procedural efficiencies

- Authorise WSEs to delegate to councils the power to exercise their Part 10 approval powers, to allow for a "one stop shop" in appropriate cases
- Enact transitional provisions which preserve existing engineering plan approvals and approval conditions, and addressing approval processes which are in train but not completed as at establishment date

Discussion

Linkage to and coordination with other consent processes

66. The three-stage WSE infrastructure connection process will frequently occur at the same time as resource and/or building consent processes. There is passing reference to this in the Bill (e.g. the validity of WSEA approvals may not exceed the expiry date of "any applicable resource consent or building consent"), but in general it is silent on the linkage between the processes and how the Bill can promote and achieve efficient coordination between them.

67. While some matters between the WSE and councils can be covered in relationship agreements, this will not always be the case, as such an agreement cannot affect an applicant's statutory rights.

68. To give an example, it is not clear whether a resource consent or building consent could be put "on hold" pending the applicant producing a stage 1 approval under the WSEA; or vice versa. There is a possible scenario where neither the WSE nor the consent authority may want to be the first to give approval, because its exercise is dependent on the other consent. The Bill should address such situations and provide for appropriate coordination.

69. At present, territorial authorities grant all three approvals, including engineering plan approval for water and wastewater infrastructure that is to vest in them. This simplifies the procedural and documentation requirements, supports coordination of the timing of the various steps, and enables a holistic approach to be taken. There is a risk of these benefits being lost if the Bill has a 'silo' approach, focusing solely on approval for connection to WSE infrastructure, and without regard for the other consents which will be required as part of the same development or activity.

70. Under the Bill, there is no express ability for a WSE to allow a council to authorise approval on its behalf or in its place, which will limit the ability of WSEs and councils to collaborate on their consenting services in the interests of efficiency for all. Some examples where a WSE and a larger council are likely to find this flexibility desirable include:

    (a) having an efficient streamlined single point of approval for simple developments (including simple connections);

    (b) efficient on-site inspection services for straightforward development (this relates to the stage 3 approval step);

    (c) in respect of vesting under the proposed section 317, having a single point of acceptance for developed land i.e. sufficient flexibility to operate a cohesive vesting process (water services infrastructure and other asset classes - notably roading - together), avoiding situations where say pipes are vested, but other infrastructure is not and vice versa (this relates to Stage 3 approval step). As per the earlier discussion, it may be unclear as to whether, say, green water services infrastructure such as bioretention vests in the WSE as part of the stormwater network, or vests in the

territorial authority or other road controlling authority as part of a transport stomwater system. A single process to align timing of acceptance can assist developers, WSEs and councils.

71. A WSE Board's powers to delegate (section 87 of the WSEA) are limited to "internal" delegations, and we are not aware of any power for a WSE to transfer functions to a council. However, especially in this context of approvals to connect, it would be useful to provide for the possibility of delegations to councils, in order to facilitate a more efficient "one stop shop" for related consents/approvals.

Transitional issues

72. The Bill does not contain any transitional provisions carrying over relevant engineering plan approvals existing at the establishment date, preserving ongoing approval conditions (e.g. vesting requirements) or addressing approval processes which are in train but not completed. These will need to be added.

More detailed recommendations

Provision of WSEA	Recommendation	Reason
New	Add provisions which provide for linkages between water services connection consent process and RMA and Building Act consent processes	Will encourage and facilitate coordination and procedural efficiencies
New	Add a power for WSE to delegate 3–step approval decision-making to councils	More efficient and cost effective
New	Include transitional provisions continuing existing engineering plan approvals, conditions and approval processes which have been commenced	To help to ensure smooth and workable transition

Topic 5: Water services charges (Part 11, sections 318 to 350 of WSEA)

Summary of key points

- Cost sharing between WSEs and councils for information in the rating information database should be based on Rating Valuations Act formula
- Consider adding a consultation or engagement obligation before a WSE sets charges. At the very least the WSE should engage with the regional representative group
- Require WSE charging decisions to be in accordance with its funding and pricing plan
- Broaden the charging principles in proposed section 331 of the WSE to enable charging decisions to take into account matters such as:
  - the affordability of the charges to consumers or groups of consumers;
  - the need for or desirability of incentivising consumer behaviour;
  - the extent to which consumers or groups of consumers are causing or contributing to the need for particular services or the costs of that service (this may be relevant to trade waste charges in particular);
  - the administrative costs and benefits to the WSE of uniform vs differentiated charging;
  - the overall impact on consumers and communities

- Clarify whether the section 331 mandatory considerations are exclusive or inclusive
- Provide a closer link between sections 331 and 334, in particular to confirm that the charging principles do not limit the power to charge geographically averaged prices
- Delete proposed new section 133(3)(a)(vii) which says that a GPS may include expectations as to geographic averaging, on the basis that this inherently risks being directory contrary to section 117
- Align liability for trade waste charges with the holder of the trade waste permit (if there is one) rather than the occupier of the property
- Confirm that volumetric wastewater charging may be calculated based on volume of water supplied
- Remove the option of WSEs being able to charge councils for stormwater services in lieu of direct charging of their consumers, until 1 July 2027. If the option remains, confer specific rating powers on councils to recover the relevant expenditure and enact timing requirements to enable accommodation within normal council planning and financial cycles

Discussion

Sharing of rating information by councils

73. The Bill provides (proposed sections 319 and 320 of the WSEA) that councils must give WSEs information from the rating information database (**RID**) that the WSE reasonably needs to charge its customers. This information must be provided on "a reasonable cost basis". There is no further guidance as to what a "reasonable cost basis" would be, including whether it encompasses just the cost of extracting and providing the information, or also the cost of the information itself.

74. Much of the information in the RID will be derived from the district valuation roll (**DVR**) prepared under the Rating Valuations Act 1998 (**RVA**). That DVR information is used by both territorial authorities and regional councils and section 43 of the RVA contains a formula for the sharing of costs in its preparation (if not otherwise agreed), which depends on the respective rates revenue generated by the councils and the costs incurred in preparing and maintaining the particular information required by the regional council.

75. It would be fair for WSEs to likewise share in the costs of the preparation of the relevant information in a manner proportionate to their revenue which is received through the use of that information, otherwise councils will be subsidising the operating costs of WSEs. It is therefore submitted that proposed section 319 be amended to make it clear that WSEs can be required to pay a share of the costs calculated on a specified basis - the same or similar to section 43 of the RVA. This would obviously be subject to the parties agreeing otherwise.

Process for setting charges

76. There is no requirement for WSEs to consult or otherwise engage before setting charges (other than infrastructure contributions) under proposed section 330 of the WSEA. This will be quite a significant change: presently, customers of councils are consulted on proposed rates/charges, and Watercare engages with its shareholder, Auckland Council, prior to new customer charges coming into force at the start of each financial year.

77. At the very least, it is submitted that a WSE should be required to engage with its regional representative group prior to fixing charges.

78. In addition, to provide greater accountability and predictability in its pricing, WSEs should be required to make charging decisions which are in accordance with its funding and pricing plan.

Charging principles

79. The Bill contains charging principles in proposed section 331 of the WSEA, which are mandatory considerations when setting charges. There are several issues with this section.

80. First, the section does not state whether the list of charging principles is exclusive, or whether the WSE is able to consider, and take into account, other matters as well. As section 331 is likely to be the focus of any legal challenge to water services charges (similar to challenges to development contributions or rates under the LGA, based on alleged non-compliance with statutory provisions), it is important to clarify this.

81. Secondly, the principles are far too narrowly drawn. (This point is especially important if the principles are exclusive.) WSEs should be able to set charges taking into account the range of considerations which councils may presently consider when setting rates for water services.

82. In line with the statutory objectives of WSEs in section 12 of the WSEA, the principles should allow WSEs to set charges taking into account:

- the affordability of the charges to consumers or groups of consumers;
- the need for or desirability of incentivising consumer behaviour (for example, reduced water consumption);
- the extent to which consumers or groups of consumers are causing or contributing to the need for particular services or the costs of that service (this may be relevant to trade waste charges in particular);
- the administrative costs and benefits to the WSE of uniform vs differentiated charging;
- the overall impact on consumers and communities.

83. It may be noted that at present, broader considerations such as these must be taken into account by local authorities when determining how water services they provide are to be funded: LGA02, section 101(3).

84. The principles currently say (proposed section 331(1)(a)(ii)) that different groups of consumers should only be charged differently if they receive different levels or types of service, or if the cost of providing the services to those groups is different. This is too restrictive – for example affordability is a recognised and generally accepted basis for charge differentiation. The example given after section 331(3), which refers to "commercial" and "residential" charges, seems to assume that such differentiation is possible, whereas this would be contrary to the section 331(1)(a)(ii) principle (assuming the level, type and costs of the service provided to these groups, such as the provision of drinking water, are identical).

85. Thirdly, there is a question mark about the relationship between the charging principles and the geographic averaging authorised under section 334. The use of geographic average pricing is supported, as it can smooth and share costs across a WSE's service area despite differences in the actual cost of servicing different communities in that area, and thereby aid vulnerable customers.

86. Arguably, however, geographic averaging is inconsistent with the charging principles. The Bill therefore needs to contain a closer link between sections 331 and 334, and in particular provide that the charging principles do not limit the power to charge geographically averaged prices.

87. Clause 13 of the Bill will amend the list of Government "expectations" which may be contained in a GPS to include "geographic averaging of residential water supply and residential wastewater service prices across each water services entity's service area". This is much more specific than the other matters listed in section 133 of the WSEA which may be included in a GPS.

88. The proposed new section 133(3)(a)(vii) relating to expectations as to geographic averaging in a GPS is not supported. It goes too far, potentially breaching the prohibition on directions being given to WSE in a GPS or other document found in section 117 of the WSEA.

Mechanics of charging/liability for charges

89. Proposed section 321(3) of the WSEA refers to the occupier being liable for trade waste charges in respect of a property that has a trade waste permit. However, under sections 266 to 268 a permit can be applied for by a person who "owns or occupies trade waste premises in the entity's service area" and the permit is issued to that person, not a property. The person liable for trade waste charges should be the permit-holder (if there is one), rather than (by default) the occupier.

90. Proposed section 329, which relates to volumetric charging, refers to charging by reference to water meters. As wastewater meters are still uncommon, it may be appropriate to add to section 329(3) a statement that a WSE may charge for a consumer's volumetric use of wastewater services based on a specified percentage of the water supplied to the consumer as measured by the water meter. This is to avoid arguments that absent wastewater metering, wastewater charges cannot be proven to be volumetric.

WSE charging councils for stormwater until 1 July 2027

91. Between 1 July 2024 and 1 July 2027, a WSE may charge a council for stormwater services provided within that council's district, if the WSE is not charging customers directly (proposed clause 63 of Schedule 1 to WSEA).

92. This provision is opposed in principle: a WSE is providing services to its customers, not to the council, and it ought to be charging those customers in its own right, from its establishment date. The expedient of using the council as a convenient way to meet the costs is contrary to the principles of the WSEA and the LGA02, lacks transparency and is unfair to councils who then have to somehow recover the costs without having any responsibility for or relationship with the services in question.

93. It is also unclear how the provision would work in practice. The Bill gives no specific power to councils to rate to recover the costs, or puts in place any timing requirements to enable that to be accommodated within a council's normal funding and financial planning cycle.

94. If the Bill continues to allow WSEs to bill councils for stormwater instead of their customers, it should be accompanied by a specific authority for councils to rate to recover those costs, perhaps on a prescribed basis in order to reflect the fact that the council is being used as a conduit for recovering charges on behalf of the WSE. A precedent for this type of

approach is section 34 of the Local Government (Auckland Transitional Provisions) Act 2010, pursuant to which Auckland Council was required to set a prescribed wastewater rate in order to meet Watercare's wastewater revenue requirements, and to transfer the money received from that rate to Watercare.

More detailed recommendations

Provision	Recommendation	Reason
Clause 13, amended section 133 of the WSEA	Delete proposed section 133(3)(a)(vii) (in relation to geographic averaging).	Risks being impermissibly directory
Section 319 of the WSEA	Amend section 319 as follows: (3) The local authority must provide the rating information- ~~(a)~~ as soon as is reasonably practicable after receiving a request from the water services entity.~~; and~~ ~~(b) on a reasonable cost basis~~. (4) <u>The water services entity must pay the local authority a share of the costs of preparing and maintaining the relevant information in the rating information database, calculated in accordance with the formula in section 43(3) of the Rating Valuations Act 1998 (applied with all necessary changes), or such other amount as is agreed between them.</u>	Fairer contribution to council's costs
Section 321 of the WSEA	Replace subsection (3) with the following: The person liable to pay trade waste charges in respect of a property is: (a) the holder of the trade waste permit, if there is one; (b) if there is no trade waste permit, the occupier.	Fairer targeting of liable party for trade waste charges and easier administration for WSE if there is a permit.
Section 329 of the WSEA	Add new subsection (3)(c) as follows: calculate the volumetric use of wastewater services based on a reasonable proportion of the volume of water supplied to the consumer	For clarification
Section 330 of the WSEA	Add new subsection (3): A charge set by the board must be consistent with its funding and pricing plan. Add new subsection (4): Before setting a charge the board of a water services entity must engage with the regional representative group. Add to section 461(1): (ka) **section 330** (relating to setting of charges)	Inappropriate for charges to be set without any consultation or engagement. Engagement with RRG is a bare minimum.
Section 331 of the WSEA	Broaden the charging principles as set out above in submission. Amend subsection (4) as follows: Subsection (1) does not override section 333 <u>or section 334.</u>	Current proposed section 331 limits ability of WSE to meet its statutory objectives. Amendment to subsection (4) is for clarity.

Clause 61, Schedule 1	Amend subsection (1) as follows: Despite anything in Part 11, a water services entity may adopt and use the existing tariff and charging structures of the relevant ~~territorial authority or authorities~~ local government organisations.	Enables continuation of Watercare charges

Topic 6: Infrastructure contribution charges (Part 11, sections 343 to 350 of the WSEA)

Summary of key points

- Use accurate and consistent terminology to ensure clarity as to when particular requirements apply, i.e. *adopt* the IC plan and thereby *set* the charges in the plan; *require* or *impose* the ICs in particular cases; *invoice* the ICs. Amend some provisions accordingly (in particular proposed sections 343 and 345)
- Confirm that the general charging principles in proposed section 331 do not apply to ICs
- Consider amending the IC Policy requirements to include information about the period over which the capex will be incurred and identification of the anticipated assets or programmes of works to which the capex relates
- Provide that the consultation report relating to the IC Policy also cover engagement with councils, consumers, mana whenua and communities.
- Provide that the subject matter of relationship agreements may or should include the provision of information from councils to WSEs, and coordination of processes, relating to ICs.
- Remove provisions in proposed section 349 allowing 50-year period over which ICs can be paid, including by purchasers as opposed to developers
- Confirm directly that the person liable for any ICs is the owner of the property, and that the general liability provision in proposed section 321 does not apply to ICs.

Transitional issues with DCs and FCs

- Unclear what clause 62, Schedule 1 requirement for councils to transfer "unpaid or unaccounted for" DCs or FCs means
- A simpler "first principles" approach would be that on establishment date:
  - DC and FC revenue held by councils relating to water services infrastructure transfers to WSEs
  - The right to collect unpaid DCs and FCs for water services infrastructure transfers to WSEs
- Councils should also retain proportion of DC and FC revenue relating to infrastructure which will not transfer i.e. agricultural water supply, relevant stormwater (outside the urban area), and transport stormwater systems
- Councils should also retain powers to impose DCs and FCs for these activities cf clause 65, Schedule 1

Discussion

"Setting" ICs

95. The Bill's approach to ICs is broadly based on the development contributions regime in subpart 5 of Part 8 of the LGA02, however some important aspects have not been adequately translated to the WSE context. In particular there is a need to address some

of the terminology in the Bill, for clarity and in order to properly reflect the principles underpinning ICs.

96. There are three main steps in the IC process:

    (a) Step 1: an IC Policy is *adopted.* Adopting the policy will *set* the ICs contained in the Policy (at the abstract level);

    (b) Step 2: ICs are *required* or *imposed* in the particular case, applying the IC Policy;

    (c) Step 2: those ICs are *invoiced* to the property owner.

97. Rather than using the terminology in (a) and (b) above, the Bill tends to use the word *set* throughout. This is confusing because it is sometimes unclear which step is being referred to. Further, if "set" is intended to refer to Step 1, then in some cases it is incorrect, because the relevant requirement should apply at Step 2, when particular ICs are required or imposed, and not (just) when adopting the policy.

98. Applied to the specific proposed sections, this means:

    (a) section 343 – this is modelled on section 199 of the LGA02 and applies at Step 2 – it is a prerequisite to requiring contributions in the particular case. The section should therefore say *require* or *impose* rather than *set*. The cross-reference to section 343 in section 344 should make the same change;

    (b) section 344 – this covers both Step 1 and Step 2. The reference to *adopts* at Step 1 is correct. The reference to *sets* at Step 2 should be changed to *requires*. The reference to "setting" in the heading can probably remain as it can broadly cover both adopting the policy and requiring the charges in a particular case;

    (c) section 345 – this also applies at Step 2 rather than Step 1, and it should say *require* or *impose* rather than *set.* The IC Policy at Step 1 will contain a statement of the discounts available for demand mitigation measures – see section 346(2)(e) – and section 345 then applies when the particular ICs are imposed;

    (d) section 346 – this is Step 1. The Bill says *set or adopt*; it should simply say *adopt*;

    (e) section 349 – this is Step 3. The Bill could be clearer that the ICs being referred to are those already required or imposed at Step 2, i.e. it is strictly limited to the timing of the invoicing and other technical payment issues.

Other aspects of IC regime

99. On the face of it, the charging principles in proposed section 331 would seem to apply to ICs (as ICs are a category of charge listed in section 330). There is no express exclusion as in section 334 for geographic averaging. However, it is questionable whether it is necessary for the section 331 principles to apply to ICs, or indeed how they apply, given the purpose and nature of ICs, and the fact that section 344 already contains principles specific to ICs. It is submitted that section 331 should not apply to ICs.

100. The Bill is not consistent on whether it is mandatory for WSEs to have an IC Policy. Proposed section 346 of the WSEA says it is: the board "must…adopt" an IC Policy.

However, section 343(3) refers to “any” IC Policy and section 344 says “if” an IC Policy is adopted. This needs to be clarified.

101. An IC policy must include much of same information as in a council DC policy under the LGA02 (proposed section 346 of the WSEA), but there is no requirement to specify the period over which the capex will be incurred. Nor is there any requirement to identify the anticipated assets or programmes of works to which the capex relates. In both respects, the IC regime is less rigorous than that presently applying to councils – even though WSEs will have less direct public accountability.

102. Councils know from experience that requiring clear identification of expected capex and its timing is an important discipline in the development and justification of DCs, and accountability to developers and landowners who have to pay the charges. The Select Committee may wish to consider incorporating these elements into section 346.

103. Section 347(1)(c) requires the preparation of a report on the consultation undertaken on a proposed IC Policy. This could be interpreted as referring only to the consultation under subsection (1)(b), and excluding the engagement under subsection (1)(a) – which includes councils, consumers, mana whenua and communities. Section 347(1)(c) should be amended to refer to the consultation *and engagement* undertaken.

104. The Bill provides that the Crown is exempt from paying ICs (section 348). We oppose this provision, which would extend not only to the “core” Crown (Ministers and government departments) but also to schools and Crown entities like Kāinga Ora–Homes and Communities, which may by legislation be given the privileges of the Crown.[4] There is no good reason for such an exemption, which results in the Crown not paying for the demand it generates for water services infrastructure, and local developers and their communities unfairly subsidising the general taxpayer. Even territorial authorities, who are the public owners of the WSEs, will be liable to pay ICs and it is likewise reasonable for the Crown (and Crown entities) to pay their fair share towards the costs of any growth which it has necessitated.

105. A WSE’s charging of ICs, including coordination of invoicing with the statutory events in proposed section 349, will depend in part on its knowledge of council processes, in particular resource and building consents. The Bill does not expressly address practicalities in that regard e.g. provision of information from councils to WSEs, or coordination of processes. In practice there will need to be a high degree of cooperation and information sharing between the WSEs and councils. It may be desirable to specifically refer to this issue in the IC context as part of the subject matter of relationship agreements in proposed section 468 of the WSEA.

106. Proposed section 349 allows agreements for unpaid ICs to be paid off in instalments over a period of up to 50 years. While interest is payable, this type of extended payment arrangement could defeat the purpose of ICs which is to fund the impact that a development has in terms of requiring additional capital expenditure. That impact arises as soon as a development starts “consuming capacity” in water services networks. Despite the deeming provision in section 349(4), lengthy repayment periods are also likely to give rise to recovery difficulties when properties are sold.

107. We also question whether it is fair and reasonable for the proposed section 349(4) to require the new owner of a property to pay unpaid ICs: this is not currently the case with

4 See for example s39 of the Housing Act 1955 which applies to Kāinga Ora

DCs or IGCs, and it is primarily the land developer (rather than the first or a subsequent purchaser) who benefits from the provision of infrastructure that allows the new property to be developed and serviced. Further, the ongoing costs of paying off the IC may in practice be unaffordable for a homeowner, when combined with water services charges payable to the WSE and local authority rates. If despite this submission section 349(4) remains, there should at least be a requirement for the unpaid IC to be registered against the land under the Land Transfer Act 2017, so that an intending purchaser of a property has notice of the liability.

108. It seems from section 349 that the person liable for any ICs is the owner of the property. It would be desirable for the Bill to state this directly, rather than indirectly in section 349.

109. It is also necessary to make it clear that the general liability provision in section 321 does not apply to ICs. As ICs are a form of water services charge (section 330) on the face of it section 321 would apply unless it is excluded.

Transitional matters relating to ICs (proposed clauses 60, 62, 64 and 65 of Schedule 1 to WSEA)

110. Proposed section 350 is clear that councils cannot, after the establishment date, charge or use DCs or FCs relating to water services infrastructure. The transitional provisions in Schedule 1 seem to comprehend a total wash-up of DCs and FCs as at the establishment date, with no on-payments to the WSE after that date. However in some respects the Bill may not be workable or is unclear.

111. Under proposed clause 62 of Schedule 1, on the establishment date "any unpaid and unaccounted for" DC or FC in respect of water services infrastructure which was required by a council must be transferred to the relevant WSE. There is a lack of clarity as to what "unpaid and unaccounted for" contributions means, or how they are determined; what happens to DCs or FCs invoiced by a council but not yet been received, or paid but not yet spent, as at the establishment date; or how this regime applies to Watercare IGCs.[5]

112. A simpler "first principles" approach would be that on establishment date:

- DC and FC revenue held by councils relating to water services infrastructure transfers to WSEs;
- the right to collect unpaid DCs and FCs for water services infrastructure transfers to WSEs.

113. Councils should retain a proportion of DC/FC revenue relating to infrastructure which will not transfer i.e. agricultural water supply, relevant stormwater(outside the urban area), and transport stormwater systems.

114. As submitted above, councils should also retain powers to impose DC/FCs for these categories of network infrastructure, which they may still provide. The requirement that councils amend existing DC and FC policies to remove any power to require a contribution for water supply or wastewater services infrastructure (proposed clause 65 of Schedule 1) is therefore too broad: contribution policies should be able to retain provisions relating to agricultural water supply and stormwater, including transport stormwater systems (so long they are being provided by the council).

5 Proposed clause 50 anticipates the possibility, in Auckland, of FCs being transferred to the Northern WSE after the establishment date, which seems inconsistent with the principle underlying the other DC and FC transitional provisions.

115. Clause 65 should also refer to removing relevant FC provisions in a district plan (and not just the contributions policy), because the power to "require" FCs is really under the RMA and district plan and not directly in the section 102 policy. The same "by resolution" process should apply.[6]

More detailed recommendations

Provision	Recommendation	Reason
Section 321 of the WSEA	Add new subsection (5) as follows: This section does not apply to infrastructure contribution charges.	For clarification
Section 331 of the WSEA	Add new subsection: (4A) This section does not apply to the setting of infrastructure contribution charges.	For clarification
Section 343 of the WSEA	Heading – replace "set" with "require" Subsection (1) – replace "set" with "require" Subsection (2) – replace "setting" with "requiring"	More accurate and consistent terminology
Section 344 of the WSEA	Subsection (1) – replace "sets" with "requires"	
Section 345 of the WSEA	Heading – replace "set" with "require" Subsection (1) - replace "set" with "require"	
Section 346 of the WSEA	Heading – replace "set or adopt" with "adopt" Subsection (1) – replace "set or adopt" with "adopt"	
Section 349 of the WSEA	Add words to subsection (1): A water services entity may invoice a person who owns property in its service area for water infrastructure contribution charges <u>required under section 343</u> when…	
Section 343 of the WSEA	Amend subsection (3) as follows: All water infrastructure contribution charges must be consistent with ~~any~~ <u>the</u> policy adopted under section 346.	Consistency
Section 344 of the WSEA	Amend subsection (1) as follows: ~~If~~ <u>When</u> the board of a water services entity…	Consistency
Section 347 of the WSEA	Amend subsection (1)(c) as follows: produce a report on the <u>engagement and</u> consultation undertaken,…	For clarification
Section 348 of the WSEA	Delete	Unreasonable for Crown to be exempt
Section 349 of the WSEA	Add new subsection before present subsection (1): The person liable to pay infrastructure contribution charges is the owner of the property to which the development or the increased demand relates.	For clarification

6 The reference in clause 65(2)(b) of Schedule 1 to section 106(2) of the LGA02 in the context of amending a contributions policy appears to be in error.

Section 349 of the WSEA	Change reference to "not exceeding 50 years" in subsection (2)(b) to a lesser period	More in keeping with the purpose of ICs
Section 349(4) of the WSEA	Delete	Unfair for purchaser of property to assume liability for unpaid IC
Clause 65 of Schedule 1	Amend subsection (1) as follows: This clause applies in relation to a policy on development contributions or financial contributions adopted by a territorial authority and a district plan prepared under the Resource Management Act 1991. Amend subsection (2) as follows: Each policy or plan must be amended to remove any power… … (b) the amendment is not required to be made ~~as described in section 106(2) of~~ using the process in the Local Government Act 2002 or the Resource Management Act 1991: … Add new subclause (3) as follows: Subclause (2) does not apply a requirement in a policy or plan to pay a development contribution or a financial contribution for agricultural water supply or any stormwater services infrastructure (including transport stormwater systems) provided by the territorial authority.	Relevant district plan FC provisions must also be removed. The power to require DCs and FCs must continue for residual council infrastructure

Topic 7: Council collection of charges/ Pass-through billing (sections 336 to 338 of the WSEA)

Summary of key points

- Council collection of WSE charges risks causing consumer confusion about who is responsible for providing water services
- CE of WSEs "may authorise" councils to collect on behalf and "reasonable steps" taken to enter agreement, but there is no clear basis for a Council to refuse.
- Guidance on the assessment of "reasonable compensation" to be paid to the Council should be provided and the power for the Minister to determine terms removed.
- The proposed "pass-through billing" may not be practicable because:
    - If it covers the full range of possible WSE charges, the timing / process may not align with council billing processes and capacity
    - It will place additional resource pressure on councils

Discussion

116. Proposed section 336 provides that a WSE "may authorise" a council to collect charges on behalf of the WSE, and the chief executive of a WSE and the council "must take all reasonable steps" to enter into a charges collection agreement. The agreement must provide for "reasonable compensation" to council, and the Minister determines any terms where the parties are unable to agree.

117. It appears councils are being required to provide billing services for the WSE. The basic power in section 336(1) to "authorise" a council to collect charges, must be preceded by reasonable steps to agree (section 336(2)). Therefore, by implication, it seems councils are required to agree, particularly as the Minister will decide terms if the WSE and council cannot agree. As such, the wording "may authorise" appears disingenuous.

118. Councils may not have the capacity to provide this service to the WSE. They may need to employ additional or temporary staff to do so, but at the same time the WSE will be competing for the same human resources to help set up their systems. We submit that councils should have the ability to refuse to accept authorisation to enter into an agreement.

119. There is also concern about whether the full range of possible WSE charges are to be covered in a collection agreement, including IC charges, and whether the liable entities and timing will align with current council billing processes and capacity. The WSE should carry the risk of council resources and systems not being able to do what the WSE might want. This will need to be a term in the agreement.

120. Where a council agrees to be a collection agent, there is the potential for confusion about who is responsible for water services, if councils are still doing the billing. This can be reduced if, say, councils are required to issue invoices clearly showing it is a WSE charge. Unless WSE invoices and payments are kept entirely separate, councils may favour their own funding needs if a payer pays an "untagged" amount that could cover both council and WSE charges, or pays an amount that is insufficient to cover both WSE charges and council charges. The legislation does not specify, in the event of partial payment of this type, whether local authority or WSE charges have priority.

121. There is also the potential for arguments about what is "reasonable compensation", which could be reduced through the provision of guidance material about the type of matters that can be included. While matters such as postal costs, IT and other administration costs such as reading of meters are likely to be included would "compensation" cover improvements to council systems that might be required to address the different types of charges, or the employment of temporary staff to manage the new charges and system?

122. The final decision about compensation could then be for the council to determine, based on the guidance, and is not something that needs to be decided by the Minister. The addition of a dispute resolution process could assist where there is disagreement on terms between the WSE and the council.

More detailed recommendations

Section of WSEA	Recommendation	Reason
Section 336	Amend section 336(2) to delete "Before relying on subsection 1…." and replace it with: "If the local authority or authorities agree to be authorised under subsection 1…." Add a requirement for guidance on the assessment of reasonable compensation	Councils need control over whether they carry out this service or not

Topic 8: WSE rates exemption (clause 137; section 142 of the WSEA)

Summary of key points

- Intent seems to be that WSE land will be non-rateable, however proposed amendment to Schedule 1 of the Local Government (Rating) Act does not correspond to current wording , and so this is unclear
- If the Bill does propose non-rateable status for WSE land, it is strongly opposed. WSE land and WSEs are not inherently deserving of non-rateable status, and councils should not be financially supporting WSEs through preferential rates treatment
- Likewise, the provision granting non-rateable status to WSE infrastructure on roads (or other third party land) is unjustified and should be removed

Discussion

Non-rateability of WSE infrastructure

123. It appears the Bill's intent is to make land owned by WSEs non-rateable. This conclusion is not certain because the relevant provision in the Bill (clause 137) proposes an amendment to the Schedule of non-rateable land in the Local Government (Rating) Act 2002 (**LGRA**) - adding a new clause 3(3)(e) - which does not correspond to the current LGRA and seems to be in error.

124. If the Bill does propose non-rateable status for WSE land, then it is strongly opposed. There is nothing about land used for water services which qualifies it for non-rateability - it is not of a nature or type which naturally brings it within the categories of non-rateable land in the Schedule. 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 removing that status, and depriving councils of much needed rates revenue, simply because the assets are transferring to WSEs.

125. Granting non-rateable status is also inconsistent with the statutory principle of financial independence of 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.

126. The same comments are made in relation to proposed section 342 of the WSEA, which makes WSE infrastructure such as pipes, when in or on another's land such as roads, non-rateable. This treats WSE infrastructure differently to other network infrastructure e.g. telecommunications, gas, and electricity pipes or lines, all of which is rateable when fixed in, on or under the road.

127. There is no good reason for giving WSE infrastructure special rates treatment, and doing so is inconsistent with its financial independence, as set out above. Section 342 is therefore opposed.

More detailed recommendations

Provision	Recommendation	Reason
Section 342 of the WSEA	Delete	WSEs should be fully rateable

Clause 137, amendment to Schedule 1 of the Local Government (Rating) Act 2002	Delete	WSEs should be fully rateable

Topic 9: Bylaws and rules/ instruments

Summary of key points

- The WSE Board has power to adopt existing Council bylaws as new instruments but no engagement is required, if the application and effect of the instrument is the same, even though modifications can be made. The WSE should be required to consult with councils if modifications are made.
- WSEs need the power to adopt resolutions made under bylaws, to avoid deficient or ineffective regulation of bylaw matters.
- Health Act bylaws may also need to continue or alternatively be amended or revoked using the same procedure being provided for LGA02 bylaws
- Definition of "spent water services bylaw" refers to section 146 LGA02, but the position needs clarification where a bylaw is made under both sections 145 and s146.

Discussion

128. Clause 56 of proposed new part 2 to Schedule 1 of the WSEA provides for the WSE Board to make certain instruments during the establishment period (which are not effective until the establishment date). This includes the power to adopt (with or without change) existing water services bylaws to become new stormwater network rules, trade waste plans, water use restrictions, or other instruments under WSE's new powers. The normal engagement requirements do not apply provided the "instrument applies to the same area and has the same material effect as the existing bylaw".

129. While these provisions will facilitate the transition, it is not clear how easy it will be to make modifications to and consolidate bylaws to become workable instruments. If there is no requirement to engage with councils and communities how can the WSE be certain that modifications or consolidation will have the same material effect? We submit that the WSE should consult with the relevant council regarding modifications to instruments.

130. We submit that the Board's ability to adopt existing bylaws should also extend to adopting resolutions made under section 151(2) LGA02.[7] These resolutions often contain the specific detail of the regulation provided under the bylaw. If these are not also transferred to the WSE then the bylaw regulation will be deficient.[8]

131. Under proposed clauses 66 to 70 of Schedule 1, councils must amend or revoke bylaws relating to water services if they are satisfied the bylaws have ceased to have effect (and consultation is not required). Generally, a council will be satisfied a bylaw has ceased to have effect where a function has shifted to a WSE, but it may not always be straightforward to make this assessment, especially where a bylaw has a section 145 LGA02 (nuisance,

7 Section 151(2) provides that "a bylaw may leave any matter or thing to be regulated, controlled, or prohibited by the local authority by resolution either generally, for any specified classes of case, or in a particular case".

8 We note that reference is made to the revocation of section 151(2) resolutions in caluse 68, in the context of spent water services bylaws.

public health and safety) rationale as well. This is an area where the national transition unit could usefully provide guidance.

132. However, it seems to be an oversight that there is no equivalent provision applying to Health Act bylaws, even though there may be bylaws made under that Act that may still have effect for councils in relation to their remaining functions. Councils may still make bylaws regulating private drainage.

133. The revocation provisions in proposed clause 68 cover resolutions under section 151(2) LGA02, unless otherwise provided under the WSEA. However, consents, permits and authorisations (including trade waste consents) issued under spent bylaws continue in force for specified periods of time. As some consents, permits etc may have been made by section 151(2) resolution, the effect of the revocation of any such resolutions should be clarified.

134. "Spent water services bylaws" are defined as those made under section 146 LGA02 relating to water services. However some bylaws are made under other provisions as well (e.g. section 145 LGA02), and it would be helpful to clarify the position where bylaws are also made under that power.

135. It is also not clear whether proposed clause 66 captures council trade waste bylaws as a spent water services bylaw. While there are inferences trade waste is part of water services (for example, in the proposed section 330 charges can be set for "wastewater services, including trade waste services"), this matter should be clarified to avoid any doubt.

More detailed recommendations

Clause of Schedule 1 of WSEA	Recommendation	Reason
56	Add a requirement for consultation with councils on all instruments that adopt bylaw provisions, to confirm any modifications and that an instrument has the same material effect as the bylaw. Add a provision for the WSE board to also adopt resolutions under section 151(2) made in relation to any existing bylaw.	Consistency and reduce litigation risk
66 to 70	Amend clause 66(3) to cover bylaws relating to water services made under the Health Act 1956. Consider whether clause 66(3) should also refer to bylaws made under section 145 of the LGA02 Ensure that trade waste bylaws are clearly covered as a spent water services bylaw	Consistency and to avoid doubt
68	Add a further provision to clarify that although a s151(2) resolution is revoked any consents, permits etc approved under a section 151(2) resolution are not revoked.	To avoid doubt

Topic 10: Trade waste (Part 6, subpart 3, sections 266 to 273 of the WSEA)

Summary of key points

- Requirement for all trade waste discharges to be authorised by a permit (section 270) imposes unnecessary compliance costs. Instead, trade waste plan should be given a greater role in setting relevant requirements
- Trade waste plan should be able to allow specified discharges (with or without conditions), obviating need for permit unless specific conditions are required
- Offence provisions (sections 397 and 398) should be recast accordingly to recognise role of trade waste plan in permitting or prohibiting discharges
- Bill should specifically allow for trade waste plans to have different requirements in different parts of the WSE's service area
- Subpart should recognise or provide for trade waste agreements in lieu of trade waste permits. Existing trade waste agreements must be continued in force in the Bill's transitional provisions
- Liability for trade waste charges should sit with the permit-holder (if there is one) rather than the occupier
- To improve enforceability and effectiveness, a "compliance requirement" as defined in clause 5 should include a provision in a trade waste plan or in a trade waste agreement.

Discussion

Authorisation to discharge trade waste/trade waste plan/trade waste permit

136. The Bill's approach is to make the "trade waste permit" the sole means of authorising trade waste discharges (proposed section 268 of the WSEA). This will impose unnecessary complexity and compliance costs, as well as an administrative burden on the WSEs, because it will require all trade waste discharges to be authorised by a permit.

137. Instead, the Bill should give WSEs greater flexibility by allowing for a level of authorisation simply through the trade waste plan, with or without conditions, and without the need for a permit. A plan should also be able to specify prohibited discharges. This is the approach taken in some existing council trade waste bylaws.

138. The plan could for example provide that a specified level of trade waste discharge (e.g low risk discharges from food services premises) is authorised, subject to compliance with stated conditions (for example in the case of food services premises, installation of a grease trap). Proposed section 270(2) of the WSEA, which says that a trade waste plan may specify the classes of waste or material that are not trade waste, expresses a similar idea; however, it is not the *type* of waste but compliance with an appropriate condition (e.g. use of a grease trap or sink strainer) that justifies exemption from permit requirements.

139. Unless a discharge is entirely prohibited, the issue is then what (if any) conditions should attach to the discharge. Section 270 refers to trade waste plans needing to specify which activities will be allowed, subject to restrictions, or prohibited *under a permit*. There is no need for a permit to allow (without restrictions) or prohibit activities – a trade waste plan should do that. The sole purpose of a permit is to *allow a discharge of trade wastes subject to conditions.*

140. Under this approach, there will be a need for far fewer permits. Much of the "heavy lifting" can be in the plan itself. Section 268 will need to be amended accordingly, to provide that discharges must be in accordance with the trade waste plan and any trade waste permit.

141. The offence provisions (proposed new sections 398 and 399) will also need to be recast to recognise role of the trade waste plan in permitting or prohibiting discharges.

142. Proposed section 270, dealing with the content of trade waste plans, refers to *activities* which are allowed, permitted etc. It would be more apt to refer to *discharges.*

143. Some treatment plants are better equipped than others to accept trade wastes, which may mean different requirements or standards for discharges. This may have wider implications as well – at present some councils take advantage of this by trying to attract wet industry through appropriate trade waste standards, while others may have particularly senstive receiving environments, or have wastewater treatment plants of other infrastructure that are unable to handle significant wet industry or types of trade waste, and so are happy to discourage this. Trade waste policy may therefore be relevant to broader environmental, social, cultural and economic wellbeing.

144. As this dynamic could play out within a WSE's area (and potentially influenced through the RRG and the statement of strategic and performance expectations under section 139 of the WSEA), it would be useful if section 270 confirmed that a trade waste plan may be different in different parts of the WSE's service area.

Trade waste agreements

145. The Bill does not recognise or provide for trade waste agreements. These are commonly used at present in place of trade waste permits.

146. Subpart 3 should therefore provide that:

- WSEs may enter into trade waste agreements, in lieu of compliance with the trade waste plan;
- a trade waste agreement prevails over any inconsistent provision of a trade waste plan.

147. The WSE's general approach to trade waste agreements and when they will be used could be included as a component of the trade waste plan under section 270.

148. The Bill's transitional provisions should also continue in force all existing trade waste agreements, which it does not at present. Such agreements should be treated as deemed trade waste permits granted under the WSEA.

Liability for trade waste charges

149. Proposed section 321(3) refers to the occupier being liable for trade waste charges in respect of a "property…that has a trade waste permit". However, under sections 266 to 268 a permit can be applied for by a person who "owns or occupies trade waste premises in the entity's service area" and the permit is issued to that person. The person liable for trade waste charges should be the permit-holder, if there is one, rather than (by default) the occupier.

Enforcement

150. The definition of "compliance requirement" in clause 5 of the Bill, as it applies to trade waste, is too narrow. It does not include a provision in a trade waste plan. This means a compliance order cannot be issued for such breaches.

151. This significantly reduces the enforcement options and therefore effectiveness, especially if (as submitted above) it is the trade waste plan rather than the permit which will establish the compliance obligation in many cases. The provision should also reflect the need to comply with trade waste agreements (if these are going to be recognised under the Bill).

152. Accordingly, paragraph (c) of the definition of "compliance requirement" should be changed to "a trade waste plan, trade waste permit or trade waste agreement". (The definition should also cover water usage restriction rules and rules regulating customer behaviour.)

More detailed recommendations

Provision	Recommendation	Reason
Clause 5, definition of *compliance requirement*	Amend (c) as follows: A trade waste plan, trade waste permit or trade waste agreement: Add: • A water usage restriction rule • A rule regulating consumer behaviour	Improved enforceability by including all sources of possible trade waste obligations
Section 268 of the WSEA	Amend as follows: **Persons may discharge trade waste into wastewater networks only if complying with trade waste plan and trade waste permits** A person may discharge trade waste into a wastewater network only if the person complies with every requirement, condition, and limit specified in the relevant trade waste plan and any relevant trade waste permit.	More efficient approach
Section 270 of the WSEA	Amend subsection (1) as follows: A trade waste plan must specify – (a) which ~~activities~~ discharges ~~will be~~ are allowed ~~under a permit~~; and ~~(b)~~ which ~~activities~~ discharges ~~will be~~ require a permit ~~be subject to restrictions under a permit~~; and ~~(c)~~ any ~~activities~~ discharges that ~~will be~~ are prohibited ~~under a permit~~; and (d) the water services entity's intended approach – (i) to ~~issuing permits for~~ regulating trade waste discharges over a 5-year period, including the approach to classes of trade waste, trade waste premises, and trade waste carriers: (ii) to determining the requirements, conditions, and limits that are to apply to different classes of trade waste ~~under trade waste permits~~: (iii) to determining the qualification, training, and supervision requirements that are to	More efficient approach

	apply to persons who ~~are granted~~ discharge trade waste ~~permits~~: (iv) to determining the considerations that are to apply when the water services entity sets fees or charges in relation to trade waste and trade waste permits.	
Section 270 of the WSEA	Amend subsection (2) as follows: A trade waste plan may: (a) specify the classes of waste or material that are not trade waste: (b) specify different requirements, conditions, limits or other matters in different parts of the water service entity's service area.	Desirable to expressly recognise possible differentiation within area
New sections following section 273	Add the following: *Trade waste agreements* (1) A water services entity may enter into a trade waste agreement with any person who may apply for a trade waste permit under section 266. (2) A trade waste agreement prevails over any inconsistent provision of a trade waste plan.	Bill needs to take into account trade waste agreements
Section 321 of the WSEA	Replace subsection (3) with the following: The person liable to pay trade waste charges in respect of a property is: (a) the holder of the trade waste permit, if there is one; (b) if there is no trade waste permit, the occupier.	Fairer targeting of liable party for trade waste charges and easier administration for WSE if there is a permit.
Section 397 of the WSEA	Amend heading and subsection (1) as follows: **Discharging trade waste ~~without trade waste permit~~ contrary to trade waste plan** (1) a person commits an offence if the person discharges trade waste into a wastewater network contrary to a trade waste plan (including without a trade waste permit issued under section 267 when the plan requires such a permit).	Bill needs to take into account trade waste agreements
New clause 70A of Schedule 1	Add a clause which continues any trade waste agreement in force immediately before the establishment date.	Bill needs to take into account trade waste agreements

Topic 11: Engagement/involvement with local authorities

Summary of key points

- The amended functions of the WSEs (in section 13 of the WSEA) are proposed to include "to partner and engage with its territorial authority owners", but many provsions in the Bill and Act are inconsistent with or even undermine that function.
- The Bill's definition of "engagement" does not make it clear what effective or meaningful engagement / consultation means in relation to decision-making.
- The principles set out in proposed section 462 are inadequate insofar as they only apply to WSE engagement with *consumers.*
- There is no clear feedback loop requring the WSEs to respond to any feedback provided by the WSE's council owners or others who have been consulted.

- Overall, there is insufficient certainty that council owners will be able to influence WSE decision-making, particularly when the decisions intersect with remaining council functions.
- The Bill fails to set out how WSEs will engage with mana whenua, being the other group (alongside territorial authorities) with whom WSEs are required to partner (under the new section 13)
- The Bill relies heavily on relationship agreements to inform the working relationship between the WSEs and other key stakeholders, but the relevant provisions are incomplete, do not provide for any transfer of functions or delegation, and are unenforceable (when they may need to be enforceable in certain cases).
- There should be a statutory dispute resolution process for the development of relationship agreements, and in relation to any disputes that arise between the parties.

Discussion

Provisions (especially in relation to the GPS) inconsistent with effective partnership

153. Clause 7 of the Bill proposes to replace section 13 of the WSEA with a wider set of functions, including a function to "partner and engage with its territorial authority owners". While the Councils support the intent behind this change, and the express acknowledgement that territorial authorities will remain the "owners" of the WSEs, it is not clear on the face of the Bill that there is any mechanism or process that reflects this partnership when the WSEs are seeking input into decision-making processes.

154. The vast majority of the decision-making functions conferred on the WSEs require "engagement" with councils or local government organisations, but there is no clear ability for those parties to influence the decisions made by WSEs.

155. It is assumed that the primary mechanism by which council owners are expected to exert influence over the WSEs is via the key documents in Part 4 of the WSEA: in particular, the statement of strategic and performance expectations and the statement of intent. Under section 140, the board of a WSE "must give effect to" the statement of strategic and performance expectations when performing its functions.

156. However, the status of the statement of strategic and performance expectations as the primary direction-setting document for a WSE is undermined by the ability for the Minister to issue a GPS that is broad ranging in its content (see section 133), and the requirement in section 136 that a WSE "must give effect to" any GPS when performing its functions. In short, it may be impossible to give effect to both a GPS and the statement of strategic and performance expectations, where those documents set different priorities or are inconsistent with one another. As wider aspects of the public interest are safeguarded through the economic and health and environmental regulation (by the Commerce Commission and Taumata Arowai respectively) there can be no justification for "central government" in the broadest sense having any residual power to set direction for the WSEs in a way that undermines local ownership and control.

Inadequacy of engagement requirements and principles

157. While properly recognising "partnership", the Bill should provide for a greater level of council involvement in relation to WSE decisions that will or could, directly or indirectly,

overlap with council functions. As described in topic 2 above, there is a clear overlap between the functions and powers of the WSEs and spatial / land use planning, and this should require far greater council involvement than mere "input" or "feedback".

158. Proposed sections 461 and 462 (currently sections 206 and 209 respectively) require engagement in relation to certain matters and decisions, and prescribe principles of engagement with "consumers". They do not apply to engagement with any other stakeholders.

159. In the proposed section 461, the definition of engagement requires that a WSE or the Minister do either or both of the following before deciding on a matter:

    a) consult on a proposal:
    b) seek input, on an iterative basis, during the formulation of a proposal, or feedback on a proposal.

160. There is no elaboration on what is meant by "consult", and clause (b) is expressed as an either/or alternative. This is inadequate, and should be amended to provide greater clarity around how the WSEs should engage with all stakeholders. In the absence of more detail in the Act, this will almost inevitably be the focus of disagreement and potentially court determination, which is obviously undesirable.

161. As a comparison, the LGA02 provides for several different forms of consultation, with principles that guide (whenever a council consults) how a council is to both consider and respond to feedback received. In almost all cases in the Bill, there is no provision requiring the WSEs to respond in writing, or via reporting, to any feedback given by councils, mana whenua, consumers or other stakeholders, and so there is no closing of the feedback loop at all. WSEs will be making decisions that affect each of these stakeholders, and it should be clear to them how WSEs considered their views before making decisions.

162. In order to partly address this issue, section 14 of the WSEA could be amended to include a new principle that requires the WSEs to be open and transparent with decision-making, and which requires the WSEs to respond – in general terms – to feedback received through consultation.

Engagement principles are generic, and do not reflect the key stakeholder status of local government

163. Proposed section 462 sets out "principles of engagement with consumers". The Bill does not include any separate principles that govern the relationship between the WSE on one hand and local government and mana whenua on the other (except to the extent that they are consumers). This is clearly inadequate.

164. Local authorities and mana whenua are the most important stakeholders for the WSEs, which is reflected in the proposed reference to a WSE's function of "partnering" with both territorial authority owners and mana whenua in the amended section 13 of the WSEA. This should also be recognised through a more specifc set of principles applicable to local authorities and mana whenua that ensures their views are given due consideration, with additional opportunities for the WSEs and local authorities and mana whenua to discuss material issues before any decision is made.

165. The above commentary highlights the potential significance of some WSE decisions to council land use decision-making, planning and regulation, and this that warrants a more developed engagement relationship. There is a place for a separate "principles" provision, that enshrines a more extensive relationship between the WSEs and local authorities [and mana whenua?] ahead of decision-making, to ensure that any feedback is given meaningful attention, and responded to directly.

166. The Councils support the provisions in the Bill that require specific engagement with local authorities for some decisions or policy documents e.g. water supply assessments and stormwater management plans. However, there is no clear rationale for not requiring consultation with councils in all processes (including when they are not consumers of the WSEs).

167. By way of comparison, the principles in section 82 of the LGA02 apply to any consultation that a local authority undertakes, not just consultation with one particular group. The lack of any express principles applicable to WSE engagement with stakeholders other than consumers – over and above the very limited matters set out in section 461(4) – creates risk of a "lesser" form of consultation with stakeholders as compared toconsumers.

Transitional engagement – a lack of certainty

168. Proposed clause 76 of Schedule 1 of the WSEA treats any engagement that takes place between councils and the DIA/NTU before the establishment date, on a matter that requires engagement or consultation under the WSEA (as amended by the Bill), as qualifying as engagement or consultation (presumably for the purposes of any relevant statutory requirement, once enacted).

169. There is both a lack of certainty with this provision, and a lack of clarity with when it may apply. This creates a risk, particularly for councils, who may not have fully understood when they were being "consulted" on any matter.

170. While clearly a transitional provision, the reason for this provision remains unclear. If it is to remain in some form, it should be amended to ensure that DIA/NTU state when any pre-engagement will constitute engagement for the purposes of the WSEA, so that councils know that they should take appropriate advice as to the outcome that the WSE is pursuing.

Inadequate control over WSEs due to limited power to remove directors

171. Notwithstanding changes made to the WSEA through its Parliamentary stages, concerns remain about the lack of genuine accountability of WSEs (including with the new subsidiaries as discussed below) to their council owners. In particular, unlike with a council CCO, there is no provision in the WSEA for council owners of the WSE to remove directors of the WSE.[9] Section 70 of the WSEA allows the board appointment committee of the RRG to remove directors for "just cause", which is defined as including "misconduct, inability to perform the functions of office, neglect of duty, **and breach of any of the collective duties of the board or the individual duties of members** (depending on the seriousness of the breach)". While the definition is inclusive not exclusive, even the words

9 Under section 57 of the LGA, a local authority has the power to appoint directors to a CCO. Under section 45 of the Legislation Act 2019, this power to appoint includes the power to remove, suspend and reinstate a director.

in bold are unlikely to allow removal for failure or refusal to implement the direction set by the RRG through the statement of strategic and performance expectations.

172. Section 70 of the WSEA should be amended by this Bill to allow the RRG to direct the board appointment committee to remove board members where there is just cause. It should also add breach of the WSE's duty under section 140 to give effect to the statement of strategic and performance expectations to the definition of "just cause" for removal of a director under section 70(4). This would bring the council owners of a WSE *closer* to the level of control they have in respect of CCO directors who fail to meet shareholder objectives set out in the statement of intent, who are subject to section 95 of the LGA02.[10] The level of control would still be less, however, as the RRG comprises both territorial authority and mana whenua representatives.

Relationship agreements and service level agreements (sections 467-469)

173. The Bill relies heavily on the agreement and success of relationship and service level agreements between the WSEs, councils and other stakeholders.

174. While this method is commonly utilised by councils, the concern is that these agreements can be difficult to implement without ongoing negotiations, amendments and disputes.

175. There will be benefit in DIA / NTU requiring that individual agreements are entered into with councils, and also benefit in providing standard terms to apply across all relationship agreements (particularly with councils), for national consistency, and to ensure all councils and WSEs can take a 'best-practice' approach to any issues that arise.

176. The matters that may be addressed in relationship agreements appear to be incomplete. It would be appropriate to include, as mandatory content, the following matters: customer response, community engagement, implementation of strategic planning, and environmental monitoring. We refer above to IC charges; see paragraph 105, and note other matters that cannot be covered in such agreements (see our comments at paragraph 67).

177. We also note that if the RMA reforms are progressed, there may need to be relationship agreements with the regional planning committees.

178. The lack of enforceability of relationship agreements, in their entirety, is a further area of concern. While relationship agreements are, generally, non-enforceable, given the importance of several of the matters that may be addressed in this way, there could be a place for the parties to agree, between themselves, whether certain aspects should be enforceable or not. This would provide increased certainty for parties, and remove potential for disputes to arise. It should also be made clear that service level agreements can be enforced (to avoid any doubt about this).

179. There is a lack of any clear dispute resolution process in the Bill, as the development of those provisions is left entirely to the relationship agreement process. If relationship agreements are not made enforceable (in part, or whole) then greater emphasis on the partnership between WSEs and councils and dispute resolution may be needed to ensure effective implementation.

10 This states that the principal objective of a CCO is, amongst other matters, to achieve the commercial and non-commercial objectives of its shareholders set out in the statement of intent.

180. In addition, it is not clear whether a service level agreement referred to in section 467 is the same thing as a contract under the current section 119 of the WSEA (contracts relating to the provision of water services), or whether they can be different. This requires clarification.

More detailed recommendations

Proposed section	Recommendation	Reason
Section 13, WSEA	Amend functions to fully reflect partnership, by requiring that WSEs involve territorial authority owners in decision-making	Effective partnership
Section 14, WSEA	Amend operating principles to expand "open and transparent" requirement to all decision-making	Effective partnership
461	Make it clear that there must be engagement with councils (territorial authorities) and mana whenua	To reflect the functions of the WSE in new section 13
462	Incorporate feedback loop in principles, so that open / transparent decision-making is achieved	Effectiveness of engagement
New provision	Consider introducing new principles for engagement with mana whenua and local government to reflect s13 "partnering" function	Effectiveness of engagement
New provision	Amend s70 to allow the RRG to direct the board appointment committee to remove board members where there is just cause; and add breach of the WSE's duty under section 140 to give effect to the statement of strategic and performance expectations to the definition of "just cause" for removal of a director under section 70(4).	Increase accountability of WSE to territorial authority owners
468	Include specific reference to cooperation over IC charges information and processes as mandatory subject matter of a relationship agreement.	There will need to be a high degree of cooperation and information sharing between the WSEs and councils in relation to IC charges.
468	Clarify relationship of service level agreements with contracts under section 119 of the WSEA	Clarity
469	Provide for relationship agreements, or parts of them, to be enforceable. Alternatively, add provisions to strengthen the partnership between councils and WSEs, and make it clear that service level agreements are enforceable.	Strengthen the relationship between WSEs and Councils
Clause 76 of Schedule 1	Add provision for DIA/ the NTU to clearly identify when contact by them is being	Clarity

	relied on under this clause as engagement under the Act, and for what purpose	

Topic 12: Transition/allocation schedule and asset transfer

Summary of key points

- Asset transfer provisions require reconsideration, particularly in relation to process and dispute mechanisms
- Clarification needed in relation to the linkage between clauses 42, 43 and 44 of Schedule 1
- Bill should include a dispute mechanism for the payment of water services infrastructure debt (clause 54 of Schedule 1)
- There should be a requirement for the establishment CE to give reasons for not accepting LGO comments on an allocation schedule
- Comments from an LGO should be received before the Minister exercises the power to amend the allocation schedule
- Before any transfer powers are exercised, there should be a clear statement in the Bill about the functions and powers that will remain with councils

Discussion

Consultation and approval of allocation schedule (proposed clauses 39 and 40 of Schedule 1 of the WSEA)

181. The Bill requires consultation with each local government organisation on the draft allocation schedule, and provides opportunities to make written comments. After comments are provided, the establishment CE is obliged by proposed clause 39(d) to inform councils in writing of the reasons for any "amendments made" to the draft.

182. This requirement, if not amended to respond to comments provided by councils, will only capture additions to the draft allocation schedule. The reason this is an issue is that requests by councils to add to allocation schedule may be important, and there is no specific requirement on the establishment CE to address those as part of the consultation process. We recommend proposed clause 39(d) be amended to provide for this.

183. Proposed clause 40 of the Bill 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 that 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.

184. We note that proposed clause 40 does not provide a timeframe within which the Minister must approve the allocation schedule (although implicitly the Minister will need to approve the schedule before the establishment date). To ensure that there is certainty about the content of the final allocation schedule, a timeframe should be included, for example "as

soon as practicable after receiving the draft allocation schedule, but no later than [20 working days] after it is received".

Transfer and vesting of assets in WSE, and payment of debt (proposed clauses 42, 43 and 44, and clause 54 of Schedule 1)

185. Proposed clauses 42 and 43 of Schedule 1 of the WSEA provide for the vesting in the new WSEs or subsidiaries of assets, liabilities, and other matters relating to water services. This vesting is to occur by Order in Council (**OiC**) on the recommendation of the Minister (under clause 42) or directly under statute, except to the extent that an OiC provides otherwise (clause 43).

186. There does not appear to be any reason why assets, etc should vest in a subsidiary under proposed clause 42. We note that clause 43 does not provide for the vesting in any entity other than the WSEs. We recommend that reference to 'subsidiary' in clause 42 be removed. This issue is discussed further below.

187. There appears to be overlap between proposed clauses 42 and 43 which should be reconsidered. For example, while clause 42 relies on an OiC for the vesting, a number of the assets, liabilities and other matters that can vest overlap with what is captured by clause 43. There is no clarity around when, or why, the OiC option should be used (on the Minister's recommendation), and no provision that provides any accountability around when that power is used.

188. There is a disconnect between the Minister's role under proposed clause 42 and the Minister's functions as set out in clause 7 of Schedule 1 of the WSEA. The Minister is described as having an "oversight" role during the establishment of the WSEs. The provisions in the Bill however provide an unfettered ability to decide or amend the allocation schedule, which extends beyond oversight and into a substantive decision-making role.

189. This extension of Ministerial powers is a concern, as it is not linked to any of the existing principles that govern the preparation of the allocation schedules. For example, proposed clause 42 should be guided by principles relating to the allocation schedule process, including those included in Schedule 1 of the WSEA (see, for example, clause 6). As drafted, there is no link between the substantive powers and those principles, which creates a risk of unfettered decision-making with no dispute resolution process, which is a real issue for mixed assets and property that has a primary purpose or use that is not the delivery of water services (and which should not transfer). The Minister and the establishment CE should be focused on identifying and transferring only those assets that are "wholly" for the provision of three waters services, with no ability to trump any disputes by transferring mixed assets by OiC, which would leave no ability for disputes.

190. Another 'overlap' issue is that proposed clause 42(1)(d) does not specify that the assets, liabilities etc must relate wholly or partly to the provision of water services. This appears to allow an OiC to transfer assets etc that do not relate to water services. This provision should be amended to provide only for the transfer of items if they relate "wholly" to the provision of water services, which is what the policy intent of the reforms is understood to be.

191. We note that proposed clause 43(1)(f) does not provide for the transfer of any statutory approvals or consents that have been applied for before, but not granted or issued by, the establishment date. This is a live issue in relation to any RMA application that will be relied

on by the WSEs from 1 July 2024. Given the policy intent of Schedule 1, any approvals or consents should also transfer from local government organisations to the WSEs.

Disputes

192. Proposed clause 43(2)(b)(iii) does not apply to any charges or debts payable to or by a council, or local government organisation, in respect of the provision of water services before the establishment date. We consider that unpaid charges payable **to** an LGO at the establishment date should be treated as part of the assets, liabilities or debt, transferred to the WSE under clause 43(1)(e) of Schedule 1. From 1 July 2024, the WSE is the only entity with a legitimate interest in unpaid debts, and on this basis, the words "to or" in clause 43(2)(b)(iii) should be deleted.

193. We agree that the parties should have access to a dispute resolution process to determine ownership of contentious assets and liabilities, but there appears to be a process gap. Proposed clause 44 only allows for disputes in relation to clause 43, with no ability to raise a dispute in relation to a clause 42 matter. This should be rectified, as there may be good reason to dispute a transfer recommendation made by the Minister.

194. If a dispute is raised under clause 44, there is no provision that excludes any disputed assets, etc from vesting. The Bill should be amended to ensure that any disputed assets do not vest or transfer until such time as any disputes are resolved. In addition, there needs to be a mechanism for amending the allocation schedule if a dispute is upheld, which removes or amends the disputed item from the allocation schedule before the vesting is then confirmed.

195. The dispute resolution process in clause 44 provides for the referral of any dispute to arbitration. There is no clear ability to attend mediation as an intermediate step. Arbitration can be a costly and time consuming process, which could extend beyond 1 July 2024. If that occurs, and the asset has already vested as required by clause 43, then the WSEs will be responsible for that asset while the dispute is resolved. This creates some uncertainty, as local government organisations may intend on including that disputed asset in its long-term planning, and other decision-making.

196. As a result, the dispute process in the Bill warrants reconsideration, to ensure that it captures these scenarios.

Debt transfer

197. In terms of water services infrastructure debt, we note that there is no dispute resolution provision associated with proposed clause 54 of the Bill.

198. Clause 54 requires that a WSE must pay an amount (to be determined by the chief executive of the department) equivalent to the total debt owned by a territorial authority. What this clause does not anticipate is that there could be disputes in relation to what equates to this "total debt". As a result, a dispute process such as that provided for in clause 44 should also apply to any dispute over the amount to be paid under clause 54.

More detailed recommendations

Clause	Recommendation	Reason
39(d)	Amend the clause to also require that the establishment CE give reasons responding to comments on a draft allocation schedule from a LGO.	Clarity and reduce legal risk
40	Amend so that the Minister is to be provided with the information exchanged as part of clause 39, and to require the Minister to provide reasons for any changes to the allocation schedule. Prescribe a timeframe for approval of a schedule by the Minister.	Clarity and reduce legal risk
42	Delete all references to subsidiary.	Not appropriate to vest assets in a subsidiary of a WSE
42(1)(d)	Add wording to the end of this clause such as: "and relate wholly to [OR are for the primary purpose of] the provision of water services by the local government organisation".	Clarity
43(1)(f)	Amend the clause to also ensure it covers resource consents and other approvals that are "applied for by" an LGO	Clarity
43(2)(b)(iii)	To delete the wording shown: "any charges or debts payable ~~to or~~ by a local government organisation in respect of the provision of water services before the establishment date".	
42, 44	Extend the dispute resolution process provided for in this clause to cover disputes arising under clause 42.	Efficient process
45(2)(a)	Clause 45(2)(a) incorrectly refers to clause 42 rather than clause 43.	Correction
54, 44	Amend clause 54 to provide that the territorial authority is required to determine the amount to be paid and/or provide a dispute resolution process (as in clause 44) if there is disagreement over the amount to be paid.	Efficient process

Topic 13: Amendment to clause 27 of Part 6 of Schedule 1AA of the Local Government Act 2002 (in force under section 2(g) of the Water Services Entities Act 2022))

Summary of key points

- Clause 27 of Schedule 1AA to the LGA provides that any long-term planning (which includes amendments to a long-term plan (**LTP**)) during the establishment period[11] must exclude content related to three waters matters (i.e. delivery of services, asset management, funding arrangements, etc)
- Clause 27 does not recognise that councils retain water services functions through the establishment period, and may need to amend their LTPs relating to water services for valid reasons

11 15 December 2022 to 1 July 2024 (or earlier)

- The capture of LTP amendments requires councils to make assumptions about what assets may transfer ahead of the allocation schedule being confirmed, and creates undue complexity for the preparation of financial information supporting any LTP amendment
- **Recommendation:** amend clause 27 of Part 6 of Schedule 1AA of the Local Government Act 2002 to address the above matters

Discussion

199. Clause 27 of Schedule 1AA of the LGA02 appears too broad, in capturing amendments to a long-term plan.

200. Councils will be required to provide three water services during the establishment period, while also working with the establishment WSEs about what assets with transfer.

201. While the primary intent of clause 27 appears to concern the preparation of LTPs for the 2024/34 period (with the assumption being that three waters will at that time be a WSE responsibility), some councils may need to amend their 2021/31 LTPs for various reasons during the establishment period.

202. The effect of clause 27 is that any council that wants to amend its current LTP will need to remove three water content from the proposal. This creates a practical issue, particularly for councils that have valid reasons for amending their LTP in relation to water services issues. The practical issue is that an LTP amendment is required to include a revised set of forecast financial statements, which would be a flawed exercise for the financial year without including funding matters related to three waters services and assets. If councils are required to exclude any three waters content from such documents, they will be required to make assumptions about what three waters assets transfer or not, which is speculative at best.

203. We note that clause 30 of Subpart 4 to Schedule 1 of the WSEA provides for Department oversight in any event of proposals to amend an LTP, and so it is not the case that councils will have an unconstrained ability to make amendments to their LTPs.

Future LTPs

204. We also recommend that the Bill make it clear that clause 27 is repealed from the establishment date.

205. This is necessary to allow councils to include relevant water services functions retained by Councils in future LTPs and LTP amendments. It is also necessary to allow councils to rate for stormwater charges that the WSE may bill for under clause 63, up until 1 July 2027.

More detailed recommendations

Clause	Recommendation	Reason
27(2), Schedule 1AA, LGA	Add to the end of clause 27(2): "… unless prior approval is obtained from the Department".	Recognises ongoing responsibility by territorial authorities, and reduces legal compliance risk

New provision	Provision required to repeal clause 27 from the establishment date.	Coherence.

Topic 14: Subsidiaries of a WSE (Schedule 5 of WSEA)

Summary of key points

- The lack of direct oversight of subsidiaries by councils or a RRG is concerning
- There are already provisions in the WSEA that allow for joint arrangements between WSEs, if this is one of the underlying policy reasons for allowing subsidiaries (akin to the model of joint CCOs)
- If provision for subsidiaries is to remain, there should be greater oversight / control
- There are incompatibilities between some functions and powers given to subsidiaries that also need to be addressed

Discussion

206. The Bill provides for WSEs to establish subsidiaries, and the provisions appear to be loosely based on the council controlled organisation (CCO) provisions of the LGA.

207. It is concerning however that the detailed requirements that apply to the WSE board (in particular its relationship to the RRG) do not cascade down to subsidiaries. This creates the potential for important WSE accountabilities to be circumvented, through the use of subsidiaries. In addition, it may be possible for subsidiaries to operate for a profit, which conflicts with the original policy proposals sitting behind these reforms.

Are subsidiaries needed?

208. We query the need for subsidiaries. The explanatory note to the Bill (and background documentation) does not clearly state the rationale for introducing subsidiaries.

209. Although the ability to establish subsidiaries may allow for existing water services CCOs to be replicated under the WSE model with less disruption, it may also give rise to a corporate model that is at odds with the accountability of a WSE to an RRG.

210. Sections 119 and 120 of the WSEA provide for the WSEs to enter into contractual relationships for delivery of services, including joint arrangements. To the extent that subsidiaries are provided for in the Bill to facilitate co-operative undertakings between one or more WSEs, the Act already makes adequate provision for joint arrangements between WSEs.

Greater control and oversight required if subsidiaries remain

211. If the inclusion of subsidiaries is to remain in the Bill there needs to improved accountability to, and involvement by, councils and the RRG, and the wider community. If not adequately controlled, the introduction of this subsidiary model could see significant impacts on more financially vulnerable communities and households (by virtue of their being profit generating).

212. The Bill ought to be amended to ensure that any proposal to establish a subsidiary (whether by the WSE, or a subsidiary establishing another subsidiary) should involve a comprehensive process requiring engagement that provides transparency around the establishment of that structure. An alternative option would be to provide that the establishment of subsidiaries is treated as a major transaction under section 169 of the WSEA, requiring a special resolution of the RRG.

213. In addition, the process to establish a subsidiary should take into account the rationale for and purpose of the subsidiary (and risks), as well as measures to ensure accountability to or control by the WSE. The Bill contemplates that a subsidiary may be formed by more than one WSE and that it can undertake borrowing or manage financial risks that involve a risk of loss, for which the WSE may guarantee, indemnify or grant security (proposed clause 10 of Schedule 2).

214. While the shareholders of a subsidiary issue statements of expectation, and direct other matters relating to the subsidiary, the shareholders can be other investors separate from the WSE. Such investors may have different expectations about the performance of the subsidiary. Although the constitution of the subsidiary must not be inconsistent with the WSE constitution, this may not provide a sufficient safeguard where other investors have a shareholding.

Incompatibility with functions

215. Although a subsidiary may only carry out functions that are "incidental and related to, or consequential on" the WSE's functions (proposed clause 2(b) of Schedule 5 of the WSEA), there are provisions in the Bill that appear to be inconsistent with such an 'incidental' function (including the transfer of assets to a subsidiary in clause 42, addressed above under Topic 12). The Bill should clearly delimit the activities which may (or may not) be carried out by a WSE through a subsidiary.

216. While Council agrees that significant water infrastructure (as defined) should not be able to transfer to a subsidiary (see clause 11, which amends section 118 of the WSEA), the power in clause 42 for assets to be transferred / vested to a subsidiary through the allocation schedule process and an OiC has the potential to give a subsidiary greater control than would appear appropriate in light of clause 2(b) of Schedule 5.

217. As set out above, we recommend that the reference to subsidiary in clause 42 be deleted, so that assets can only transfer to the WSE in the first instance. Any subsequent transfer should properly engage the accountability provisions in the WSEA applying to the WSE Board / RRG.

218. We also recommend amending clause 9 of Schedule 5 to make it clear which 'activities' from sections 118 and 119 are relevant. It appears the activities in section 118 ae those set out in section 118(2), but section 119 does not refer to activities at all. Section 119 concerns contracts for the operation of all or part of a water service, and sets out matters for which the WSE remains responsible.

Recommendations

Clause/ Section	Recommendation	Reason
New	Reconsider the rationale for subsidiaries, and whether they are needed at all.	Ensure councils/ the RRG have the same level of control over subsidiaries as it does over the WSE, and they are

	If they are to remain, include a new clause to provide that any proposal to establish a subsidiary (whether by the WSE, or a subsidiary establishing another subsidiary) requires an engagement process similar to the establishment of a council CCO.	established using a clear and transparent process
Amend section 169 WSEA	Alternatively, amend section 169 so the establishment of subsidiaries is treated as a major transaction.	Subsidiaries are established using a clear and transparent process
New	Add a provision stating which activities may (or may not) be carried out by a subsidiary on behalf of the WSE.	To ensure that subsidiary functions are "incidental and related to, or consequential on" the WSE's functions.
Clause 9 of Schedule 5 of the Bill	Amend to state the 'activities' from sections 118 and 119 that apply, rather than just refer to these sections	Clarify

Topic 15: Miscellaneous amendments and recommendations

Recommendations

Provision	Recommendation	Reason
Clause 5/section 6 - definitions	Amended definition of "water services". The new paragraph (c) should replace, rather than supplement, the existing paragraph (c).	Amended definition is to include "water supplied by a water services entity for agricultural or horticultural purposes" – but this seems unnecessary as the existing definition is similarly worded in paragraph (c) and would already capture the same situation.
	"Green water services infrastructure??	
Clause 7/ section 13	Paragraphs (d) and (e) should be amended to recognise that in some circumstances WSEs will need to engage with mana whenua and communities outside their service area, ie: (d) to partner and engage with mana whenua in, and where appropriate outside, its service area (e) to engage with consumers and communities in, and where appropriate outside, its service area	One of the WSE's functions in paragraph (d) is to "partner and engage with mana whenua in its service area". "Service area" is defined in s6 of the WSEA as "the area identified in Schedule 2 as the service area of the entity". In the case of the Northern WSE, its service area does not include the current Waikato region despite critical water services infrastructure for Auckland (e.g. the Mangatangi and Mangatawhiri Dams, Waikato Water Treatment Plant, and Pukekohe Wastewater Treatment Plant) being in the Waikato region and the five "River iwi" including Waikato-Tainui being the relevant manawhenua. It is not sufficient to be engaging with other WSEs where the provision of water services crosses service area boundaries, as per the function in (f), as the engagement needs to be directly

		between the WSE and affected mana whenua or other part of the community
Section 35A	This section provides that notice can be given by Medical Officer of Health or Taumata Arowai to a WSE or regional council to carry out an assessment of potential contamination and take reasonable steps to warn users. The word “supply” in section 35A(2) appears to be incorrect. The word “source”.	Section 35A(2) refers to a WSE “responsible for the supply”, but the section itself relates to warning users of a domestic self-supply. The WSE is not responsible for a domestic self-supply and does not have to include these in the WSE’s assessment under section 245. WSEs and regional councils are responsible for a “source”
Section 233 (and offence provisions in subpart 4)	Under this section the chief executive may give a direction to comply with a controlled drinking water catchment management plan. However, there is no offence for failure to comply with a direction by the chief executive	There should be an offence linked to a direction by the chief executive under section 233, similar to section 412 (a person commits an offence if they fail to comply with a direction issued by a compliance officer under sections 364 or 365(2)(b)).
Section 258	Amend clause 258(1)(b), replacing it with "develop a stormwater management plan that has regard to any comments made by Taumata Arowai on the draft plan relating to the water services entity's obligations under the Water Services Act".	The requirement for entities to "give effect to" Taumata Arowai comments on draft stormwater management plans seems to give Taumata Arowai a broader role than intended. Taumata Arowai will have the expertise to provide comments in relation to, for example, performance standards, but the WSE should not be required to give effect to all comments (e.g. those relating to resource management matters, which are matters for local authorities) relating to the plan. The WSEs will already have the incentive to give effect to comments where it assists the entities to comply with their obligations under the Water Services Act, which is enforced by Taumata Arowai.
Section 420	Consider including a greater number of offences within the definition of “infringement offence”.	The cost of prosecuting for, say, the relatively low level offence of carrying out work in immediate proximity to the network without notifying WSE (section 407) is likely to be prohibitive. Application of the infringement regime would more effectively deter such conduct
Clause 129; sections 471 and 472 of the WSEA	WSE should be subject to timing obligations for provision of information to council, especially where that is necessary for council to respond to a particular LIM or PIM request. If necessary, deadline for providing LIM or PIM should be extended, to cater for this extra step. Bill should also say that responsibility for accuracy and completeness of information	LGOIMA is amended to provide that a LIM must contain information on private and public stormwater drainage as shown in TA’s and WSE’s records. In order to be able to respond to LIM requests, WSE must provide to TA all information it holds on private and public stormwater and sewerage drains. In order to ensure the

	sourced from WSE rests with WSE not the council.	information is up to date, this will presumably have to happen in response to each request. Similar requirement in order to respond to PIMs under Building Act. But Bill does not expressly address timing requirements for provision of this information (given that council is under statutory deadlines) or question of responsibility if information originating from WSE is inaccurate or incomplete.
	Add a requirement that the DCE and Taumata Arowai liaise, where both organisations are investigating or taking compliance and enforcement steps in relation to the same matter or property, which appears to be a possibility.	If both organisations are investigating compliance issues at the same time a property owner could end up with multiple visits over the same matter and it would be preferable if this was avoided.
Clauses 130, 131 and 140	These clauses are not required.	Schedules 1 and 2 of LGOIMA are already amended by sections 225 and 226 WSEA. Schedule 1 of the Ombudsman Act is already amended by section 228 of the WSEA.
Clause 52 of Schedule 1 to the WSEA	Clause 52 could be amended to allow for a Council CCO to be treated as a 'third party' in this clause (even though they are treated as a 'local government organisation' in the rest of the transfer related provisions).	Under the WSEA, contracts held by a Council CCO that relate to the provision of water services are included within the definition of 'assets, liabilities and other matters'. The Minister can give directions under clause 52 about how a CCO contract should be dealt with The Bill does not clearly address the situation where the contract is between two 'local government organisations', (eg the council and a CCO), and how the Minister can give directions regarding these.

Recommendations

Provision	Recommendation	Reason
Clause 5/section 6 - definitions	Amended definition of "water services". The new paragraph (c) should replace, rather than supplement, the existing paragraph (c).	Amended definition is to include "water supplied by a water services entity for agricultural or horticultural purposes" – but this seems unnecessary as the existing definition is similarly worded in paragraph (c) and would already capture the same situation.

	"Green water services infrastructure??	
Clause 7/ section 13	Paragraphs (d) and (e) should be amended to recognise that in some circumstances WSEs will need to engage with mana whenua and communities outside their service area, ie: (d) to partner and engage with mana whenua in, and where appropriate outside, its service area (e) to engage with consumers and communities in, and where appropriate outside, its service area	One of the WSE's functions in paragraph (d) is to "partner and engage with mana whenua in its service area". "Service area" is defined in s6 of the WSEA as "the area identified in Schedule 2 as the service area of the entity". In the case of the Northern WSE, its service area does not include the current Waikato region despite critical water services infrastructure for Auckland (e.g. the Mangatangi and Mangatawhiri Dams, Waikato Water Treatment Plant, and Pukekohe Wastewater Treatment Plant) being in the Waikato region and the five "River iwi" including Waikato-Tainui being the relevant manawhenua. It is not sufficient to be engaging with other WSEs where the provision of water services crosses service area boundaries, as per the function in (f), as the engagement needs to be directly between the WSE and affected mana whenua or other part of the community
Section 35A	This section provides that notice can be given by Medical Officer of Health or Taumata Arowai to a WSE or regional council to carry out an assessment of potential contamination and take reasonable steps to warn users. The word "supply" in section 35A(2) appears to be incorrect. The word "source".	Section 35A(2) refers to a WSE "responsible for the supply", but the section itself relates to warning users of a domestic self-supply. The WSE is not responsible for a domestic self-supply and does not have to include these in the WSE's assessment under section 245. WSEs and regional councils are responsible for a "source"
Section 233 (and offence provisions in subpart 4)	Under this section the chief executive may give a direction to comply with a controlled drinking water catchment management plan. However, there is no offence for failure to comply with a direction by the chief executive	There should be an offence linked to a direction by the chief executive under section 233, similar to section 412 (a person commits an offence if they fail to comply with a direction issued by a compliance officer under sections 364 or 365(2)(b)).
Section 258	Amend clause 258(1)(b), replacing it with "develop a stormwater management plan that has regard to any comments made by Taumata Arowai on the draft plan relating to the water services entity's obligations under the Water Services Act".	The requirement for entities to "give effect to" Taumata Arowai comments on draft stormwater management plans seems to give Taumata Arowai a broader role than intended. Taumata Arowai will have the expertise to provide comments in relation to, for example, performance standards, but the WSE should not be required to give effect to all comments (e.g. those relating to resource management matters, which are matters for local authorities) relating to the plan. The WSEs will already have the incentive to

		give effect to comments where it assists the entities to comply with their obligations under the Water Services Act, which is enforced by Taumata Arowai.
Section 420	Consider including a greater number of offences within the definition of "infringement offence".	The cost of prosecuting for, say, the relatively low level offence of carrying out work in immediate proximity to the network without notifying WSE (section 407) is likely to be prohibitive. Application of the infringement regime would more effectively deter such conduct
Clause 129; sections 471 and 472 of the WSEA	WSE should be subject to timing obligations for provision of information to council, especially where that is necessary for council to respond to a particular LIM or PIM request. If necessary, deadline for providing LIM or PIM should be extended, to cater for this extra step. Bill should also say that responsibility for accuracy and completeness of information sourced from WSE rests with WSE not the council.	LGOIMA is amended to provide that a LIM must contain information on private and public stormwater drainage as shown in TA's and WSE's records. In order to be able to respond to LIM requests, WSE must provide to TA all information it holds on private and public stormwater and sewerage drains. In order to ensure the information is up to date, this will presumably have to happen in response to each request. Similar requirement in order to respond to PIMs under Building Act. But Bill does not expressly address timing requirements for provision of this information (given that council is under statutory deadlines) or question of responsibility if information originating from WSE is inaccurate or incomplete.
	Add a requirement that the DCE and Taumata Arowai liaise, where both organisations are investigating or taking compliance and enforcement steps in relation to the same matter or property, which appears to be a possibility.	If both organisations are investigating compliance issues at the same time a property owner could end up with multiple visits over the same matter and it would be preferable if this was avoided.
Clauses 130, 131 and 140	These clauses are not required.	Schedules 1 and 2 of LGOIMA are already amended by sections 225 and 226 WSEA. Schedule 1 of the Ombudsman Act is already amended by section 228 of the WSEA.
Clause 52 of Schedule 1 to the WSEA	Clause 52 could be amended to allow for a Council CCO to be treated as a 'third party' in this clause (even though they are treated as a 'local government organisation' in the rest of the transfer related provisions).	Under the WSEA, contracts held by a Council CCO that relate to the provision of water services are included within the definition of 'assets, liabilities and other matters'. The Minister can give directions under clause 52 about how a CCO contract should be dealt with

		The Bill does not clearly address the situation where the contract is between two 'local government organisations', (eg the council and a CCO), and how the Minister can give directions regarding these.

Simpson Grierson submission points on WSEECP Bill

Topic 1 – Purpose of Parts 2 and 3

1. The purpose of Part 2 (clause 12) does not adequately acknowledge the nature of water infrastructure services, the water services entities who provide them, or the wider water services regulatory landscape. In particular:

   - "Consumer demands" are not the only driver of quality for water infrastructure services. There are also health, environmental and (through governance structures) broader societal drivers.

   - The reference to extracting "excessive profits" fails to recognise that most (if not all) water services entities will not have a profit motive. For example, most/all will not have shareholders interested in maximising dividends.

2. Appropriate changes to the Part 2 purpose statement would be:

> **12 Purpose of this Part**
>
> The purpose of this Part is to promote the long-term benefit of consumers in markets referred to in section 11 by promoting outcomes that are consistent with outcomes produced in competitive markets so that regulated water services providers—
>
> (a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and
>
> (b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands and meets applicable health, environmental and societal requirements in the provision of water infrastructure services; and
>
> (c) share with consumers the benefits of efficiency gains in the supply of water infrastructure services, including through lower prices; and
>
> (d) are limited in their ability to extract excessive profits, to the extent they may operate on a for-profit basis.

3. The purpose of Part 3 (clause 60) should refer to consumer demands, as the purpose of Part 2 does. "Improvements" should not mean continuous improvements in service quality beyond what consumers are happy with, as consumers would ultimately bear the cost of that.

4. An appropriate change to the Part 3 purpose statement would be:

> **60 Purpose of this Part**
>
> The purpose of this Part is to provide for consumer protection and improvements in the quality of service provided to consumers by regulated water services providers and drinking water suppliers, reflecting consumer demands.

Topic 2 – Interaction with other regulatory regimes

5. Related to topic 1, the Bill does not expressly require the Commission to take account of the requirements water services entities face under other regulatory and pseudo-regulatory regimes when the Commission exercises its functions under the Bill. These requirements may come from Taumata Arowai (as to drinking water safety), from regional councils and local authorities (as to environmental outcomes) or through governance structures (i.e. the RRG for water services entities (**WSEs**)).
   .

6. Clause 4 should be amended to rectify this. Although not exactly appropriate, a starting point for new drafting could be section 54V of the Commerce Act 1986, which relates to the interaction between the Electricity Authority and Commission in relation to the Commission's price-quality regulation of Transpower and electricity distributors. Section 54V is attached.

Topic 3 – Scope of regulated water services providers

7. There is a contradiction between clauses 13 and 54 (as to regulated water services providers under Part 2) and clauses 61 and 62 (as to regulated water services providers under Part 3). Clauses 13 and 61 say subsidiaries and other related entities of the statutory and designated WSEs are automatically regulated whereas clauses 54 and 62 say (or at least strongly imply) the Minister has to designate them as regulated. We think it would be appropriate for subsidiaries and successors to be automatically regulated and interconnected bodies corporate other than subsidiaries to be regulated only if designated.

8. Drinking water suppliers are regulated under Part 3 even if not a regulated water services provider for the purposes of Part 3. This is potentially confusing, and the confusion could be avoided by incorporating drinking water suppliers in the definition of regulated water services provider in clause 61.

9. Clause Section 66(c) suggests a designation for Part 3 could make a water services entity subject to other legislation ("prescribed consumer protection legislation") the entity would not otherwise be subject to. The designation should only apply Part 3, not other legislation (compare clause 59(a)).

10. When the Commission is considering recommending a water services entity be regulated or deregulated (clauses 47, 48 and 64), the Commission should be expressly required to take into account the likely costs of regulation under the relevant Part versus the likely benefits of it. There is no minimum size for regulated water services providers under Part 2 or Part 3, and it is possible the case for regulating or continuing to regulate a smaller provider would not stack up under a cost-benefit analysis.

Topic 4 – Timing of information disclosure, quality and price-quality regulation

11. Information disclosure regulation may prove to be sufficient to incentivise and promote the efficient provision of water infrastructure services by regulated water services providers. The Bill should not assume quality or price-quality regulation is necessary, or that it will be necessary by particular deadline dates, as it does now. There should be a Ministerial gateway - quality and price-quality regulation should only happen if the Minister, on advice from the Commission taking into account the likely costs and benefits, decides it should. Only if the Minister decides there needs to be quality or price-quality regulation should a deadline be set for it.

12. Input methodologies for each type of regulation (information disclosure, quality and price-quality) should be consulted on and finalised before that type of regulation starts. At the moment the Bill does not require this, and in fact does not require input methodologies for quality regulation at all (clause 25(1)(b)). Clause 26(2) expressly states that information disclosure regulation can start before there are information disclosure input methodologies, which is not appropriate. If this approach is a reflection of the Commission's limited capacity to get through the work necessary to implement Part 2 in time to meet the deadlines in the Bill, then that strongly suggests the deadlines are too tight.

13. It is unclear what extent of regulation would meet the deadlines in the Bill, given that a clause 15 determination may only apply to a subset of regulated water services providers and/or a subset of water infrastructure services (clause 15(2)). For example, would information disclosure regulation for one of the statutory water services entities for stormwater infrastructure services only be sufficient to meet the 1 July 2027 deadline for information disclosure regulation? There is a related question around what it means to "make" a clause 15 determination (or the services quality code under Part 3). Would a determination be considered made for the purposes of the relevant deadline if it does not come into effect until after the deadline?

14. Clause 20(2) should be amended to introduce a minimum duration for the second and subsequent regulatory periods. Four years would be appropriate, and consistent with the minimum duration of price-quality paths under section 53M of the Commerce Act 1986.

15. To avoid potential regulatory duplication, quality regulation should not be allowed to exist at the same time as price-quality regulation for the same regulated water services provider and water infrastructure service.

Topic 5 – Directive performance requirements

16. The role of an economic regulator should be to incentivise and make recommendations to the regulated entity, not to control directly the regulated entity's business. Some of what is anticipated for performance requirements in quality and price-quality regulation (clauses 39(3)(b) and 42(3)(b)) crosses inappropriately into directive control. Of particular concern is the potential for the Commission to direct regulated water services providers as to:

    - their approach to risk management
    - their approach to asset condition and remaining life
    - making particular investments (see next point)
    - asset management policies and practices
    - ring-fencing revenue for Commission-approved investments only.

17. The Bill should not provide for this type of directive control. The Commission is not an expert in the provision of water infrastructure services or any of the other utilities it regulates.

18. By way of example, Transpower may apply to the Commission for approval of a major capex project under the Transpower Capital Expenditure Input Methodology Determination 2012 made by the Commission under Part 4 of the Commerce Act. Transpower's application must include a proposed investment and compare the costs and benefits of it to the costs and benefits of other investment options that would meet the investment need. The Commission must either approve or not the proposed investment (clauses 3.3.4 and 3.3.5). The Commission is conspicuously not empowered to approve any of the other investment options or direct Transpower to carry out any particular investment (even the proposed investment if approved).

Topic 6 – Pricing principles and methodologies

19. The Bill should be clear whether or not it is within the ambit of the Commission's powers to determine pricing principles or pricing methodologies for regulated water services providers. Although the Bill does not expressly allow for this, it is arguably within the general functions of the Commission in clause 4. We do not consider the Commission should be empowered to determine pricing principles or pricing methodologies because this would confuse the regulatory landscape for regulated water services providers and reach too far into their operations. A provision similar to clause 4(3) should expressly carve this out of the Commission's functions. That would be consistent with Subpart 8 of Part 2 which leaves funding and pricing plans up to the providers (subject to Commission input) and contemplates there will be "charging principles" coming from somewhere else.

Topic 7 – Service quality code

20. The full scope of what may be in the service quality code should be specified in clause 70. At the moment the only specific content is the penalty rate for unpaid debt. Merely saying that the rest must "promote the purpose of this Part" is too vague.

21. The Bill assumes a regulated service quality code is necessary, and thus requires the Commission to make one b 1 July 2027 (clause 69). However, consistent with Part 7 of the Telecommunications Act 2001 relating to retail quality codes for telecommunications providers (section 236(1) in particular), the Commission should only be empowered to make a regulated code if the water services industry has failed to regulate, or adequately regulate, itself.

Topic 8 – Consumer complaints process

22. In clause 59(c) it is unclear what the "consumer quality complaints service" is, as distinct from the consumer disputes resolution service. As this is the only place in the Bill where the consumer quality complaints service is mentioned, we expect this is a mistake.

23. Detailed regulation of water services providers' internal consumer complaints processes and information disclosure/reporting about consumer complaints (as contemplated in clause 73(1)) is unnecessary as these matters are more appropriately dealt with in the rules of the approved consumer disputes resolution service. For example, the rules of the Energy Complaints Scheme run by Utilities Disputes Limited (the approved dispute resolution scheme for electricity and gas under the Electricity Industry Act 2010 and Gas Act 1992 respectively) contains detailed rules covering these matters. These types of rules should be included in the list in clause 3(1) of Schedule 2 of the Bill.

24. The rules of the consumer disputes resolution service are likely to contain jurisdictional limits and exclusions (as the rules of the Energy Complaints Scheme do, and as contemplated in clause 3(1)(c) of Schedule 2 of the Bill). Clause 74 should acknowledge those jurisdictional limits and exclusions, so as not to suggest there are no limits on the kind of complaint the consumer disputes resolution service can deal with.

25. Only the consumer who made the relevant complaint should have standing to appeal a determination of the consumer disputes resolution service, not any consumer (clause 78(1)).

Topic 9 – Enforcement and appeals

26. While the enforcement provisions in the Bill are broadly in line with those under similar regulatory regimes, we make the following observations:

- Clause 89(2) contradicts clause 88(1) by allowing compensation orders against a relevant person who has not been ordered to pay a pecuniary penalty.
- Clause 98 (order requiring information disclosure requirement to be complied with) duplicates the earlier provisions about injunctions (clauses 90 in particular), as do aspects of the rectification provisions in clause 105.
- There should be a limitation period for the Commission issuing an infringement notice (clause 111). Compare the 12 month limitation period under section 156D(1) of the Telecommunications Act.
- It is unclear why some determinations, notably determinations as to information disclosure and quality regulation, are excluded from merits appeals (clause 118(1)). All determinations should be subject to merits appeals.
- There is some duplication and inconsistency between clause 136 and Subpart 4 of Part 4 in terms of the Commerce Act provisions relating to enforcement, remedies and appeals that apply under the Bill.

Topic 10 – Miscellaneous

27. The definition of "water services entity" in clause 7 is circular. It should presumably be "an entity that provides one or more water services (whether or not the entity is a regulated water services provider)".

28. There is some inconsistency in the type of assurance required to support disclosure. Sometimes a statutory declaration is referred to instead of, or as well as, the more typical Management or Board certification in a prescribed form. Compare clauses 34(3)(a), 38(2)(d) and 39(3)(b)(ix).

29. Clause 42 should state that a price path can only apply to the price of water infrastructure service(s) (i.e. not unregulated goods or services a regulated water services provider may also provide). Clause 42(4) does not deal with this as it only covers quality standards, incentives and performance requirements.

30. The provisions in Subpart 8 of Part 2 about the scope and timing of regulation are, unhelpfully, separated from related provisions in clauses 21 to 23 and Subpart 9, which makes the Bill difficult to follow and understand.

10 INFORMATION FOR RECEIPT