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Finance and Expenditure Committee
Parliament Buildings
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Tēnā koutou katoa

Local Government (Water Services Preliminary Arrangements) Bill submission.

Water New Zealand (“Water NZ”) welcomes the opportunity to provide feedback on the Local Government (Water Services Preliminary Arrangements) legislation (“the Bill”).

Water NZ is a national not-for-profit organisation which promotes the sustainable management and development of New Zealand’s three waters (drinking water, wastewater and stormwater). Water NZ is the country's largest water industry body, providing leadership and support in the water sector through advocacy, collaboration and professional development. Its ~3,300 members are drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies, academia and scientists.

We also provide comment on the tabled amendment paper which specifies that the Te Mana o te Wai hierarchy of obligations in the National Policy Statement for Freshwater Management (“NPSFM”) will not apply when Taumata Arowai sets wastewater standards under the Water Services Act 2021 (“WS Act”).

Overview

Water NZ supports the Bill. It is an important step in ensuring appropriate funding, investment and regulatory compliance in our water networks across the country.

Our submission addresses the following themes:

- Definitions – consistency across legislation and questions of clarity.
- What should be in a Water Services Delivery Plan – to ensure that the Secretary of the Department of Internal Affairs has the information required to determine whether the water service delivery vehicle elected by the territorial authority is financially sustainable, that investment is adequate and regulatory compliance has or will be achieved.
- Period covered by, process for approving a Water Services Delivery Plan, and criteria for the Crown Facilitator and Crown Water Services Specialist.
- Establishment, and subsequent transition to full economic regulatory regime.

- Absence of Te Ao Māori and Te Tiriti o Waitangi.
- Other concerns.
- Amendment Paper.

Definitions

Stormwater

- The definition of stormwater differs between this Bill and the definition in the WS Act, and the Taumata Arowai – the Water Services Regulator Act 2020.
- The WS Act has a more comprehensive definition including elements beyond the traditional constructed and piped components e.g. overland flow paths, green water services infrastructure and watercourses. The broader definition is important because stormwater is a network reliant on these secondary overland flowpaths, green infrastructure and streams, not just the primary piped component.
- There also needs to be a better definition of when watercourses are part of the stormwater network.
- **Recommend:** adopt WS Act definition of stormwater.
- **Recommend:** A tighter definition of watercourses when they are part of a stormwater network is required.

Urban area within the definition of stormwater

- Stormwater is defined as being in urban areas. However, “urban area” is not defined in this Bill. It is defined in the WS Act. The WS Act definition reflects the definition in the Urban Development Act 2020 which relates to the urban- rural zoning in a district plan.
- Councils have stormwater networks within catchments where there is both rural and urban zoning. How should these be treated?
- Unitary authorities, undertake both regional and district functions, which includes assessing flood risks, water quality monitoring and reporting and stream rehabilitation / resilience - working across both rural and urban areas. Drawing the line between regional and district functions, and urban and rural zoning, for a unitary authority is very difficult – i.e. what flood events are the responsibility of the “regional council” versus the “district council.” Drawing similar lines as to what is, or is not, in a unitary authorities Water Service Delivery Plan (“WSDP”) will therefore also be difficult, creating inconsistencies with current planning and delivery requirements. This will have significant implications on financial sustainability of water services delivery, the essential work itself, and ultimately be at the approval of the Secretary – for which there is no prescribed recourse once decisions have been made.
- **Recommend:** “both rural and urban areas” are included in the definition of stormwater network.
- **Recommend:** Unitary Authorities WSDP must include for watercourses, water quality and quantity work including regional flood protection schemes and local stormwater networks.

Water Supply network

- The water supply network definition included in the Bill incorporates both firefighting water supplies and drinking water supplies. The WS Act definition only covers drinking water supplies.
- The Fire and Emergency Act 2017 sets out that firefighting water supplies includes “reticulated water supply, waterworks or fixed bulk water supply systems; and any reservoir, dam, water race or tank water supply systems”. This broader definition of water supply network under the Bill captures other infrastructure such as water race systems, irrigation dams and potentially other waterbodies not related to drinking water services (e.g. irrigation channels). Water races or irrigation dams are not to be covered by water services delivery plans or joint arrangement in relation to water services.
- **Recommend:** The definition of water supply network be revised to include only infrastructure and processes that are used to provide drinking water supply and firefighting water supplies.

Financial sustainability

- The definition of financial sustainability only requires an assessment of whether revenue applied to the authority’s delivery of water services is sufficient to ensure the long-term investment in delivering water services.
- The definition should be expanded to include debt and future borrowings as well as revenue.
- **Recommend:** Expand definition to include consideration of debt and future borrowings.

Long-term within definition of financial sustainability

- “Long-term” investment should be defined.
- Water infrastructure assets are by nature long life assets. This needs to be reflected in the assessment of financial sustainability. WSDPs only cover 10 years, this is not adequate for assessing financial sustainability, and whether an authority is able to meet all regulatory standards and requirements.
- **Recommend:** “long-term” should be 30 years or more.

Regulatory standards and requirements within definition of financial sustainability and in s11(1)(d)

- Clarification is sought as to what is encompassed by the term “regulatory standards”.
- It is well understood that many wastewater treatment plant and drainage network infrastructure in general are operating in a manner that means they are not complying with their full resource consent conditions, and in some situations are operating without a resource consent.
- Whether an authority has received an infringement, abatement notice, an enforcement order and conviction should not be the sole test of compliance with resource consents for financial sustainability purposes. The number of such enforcement actions tells us only that standards/requirements have been breached. They tell us little about the actual standards themselves as consent conditions vary from scheme to scheme.

- Enforcement actions are not consistent between regions. The measures also need to consider whether all necessary consents are a) in place and b) not expired. If non-compliances are included, the measures should also consider what non-compliances have occurred. Further, whether the relevant regional council has undertaken an audit of compliance in the last 5 years and if there have been any amendments to conditions.
- Under the WS Act water suppliers must comply with drinking water quality assurance rules, prepare and operate in accordance with Water Safety Plans and Source Water Risk Management Plans, among other things. These obligations must be included within the regulatory standards and requirements definition.
- **Recommend:** regulatory standards and requirements is defined to include obligations water suppliers have under WS Act, resource consents, and health & safety legislation.

Who has obligations under the Bill

- The intent of the Bill is to require all district councils, city councils, unitary authorities to undertake WSDPs and demonstrate financial sustainability, and investment adequacy. This does not capture Wellington Regional Council.
- Wellington Regional Council owns and provides the bulk water supply to the four metro councils in the Wellington region. This includes 18 raw water takes, 11 wells, seven reservoirs, four water treatment plants, 20 pumping stations, and over 180km of large diameter distribution pipes.
- The Bill does not recognise that regional councils with water services assets and functions will also have to decide whether they stay with their existing approach to delivering water services, or instead form a Water Services Council Controlled Organisation.
- **Recommend:** Amend Bill to include requirement on Wellington Regional Council to undertake the same tasks as a territorial authority.

What should be in a water service delivery plan?

Contents

- The items listed in s11(1) Contents of water services delivery plan are reasonable. However, there is a risk of some ambiguity, and some other matters should be included.
- Water services and delivery options are a matter of significant public interest. The decisions and actions that local authorities take in the next fourteen months will receive intense public scrutiny. The content requirements for a WSDP should be clearly specified to minimise the opportunity for challenge.
- To ensure this process is efficient for all Councils, and the Department, the provision of a “template” for a WSDP would be helpful.

- The comments which follow relate to the matters Water NZ considers should be in a WSDP. To ensure ambiguity and consistency of approach across the country is reduced, and to mitigate the risk WSDPs are not accepted, including these matters in the Bill is appropriate.
- **Recommend:** to avoid ambiguity, s11(1)(a) the current state of the water services network must capture:
 - Capacity of a network.
 - Design standard for future network renewals and growth.
 - For stormwater, the representative quality of the catchment discharge.
 - The ability to supply water, now and in the future, and to new (housing and industrial) developments.
 - The efficiency of use between water takes and discharge (water leaks and unaccounted for water can increase the water take).
 - Availability, capacity and performance of water supply and wastewater treatment plants and all networks to service new developments. Including trade waste strategies and approaches.
- S11(1)(b) requires a description of the current levels of services.
- Levels of service generally comprise a statement of the services to be provided, the standards to be achieved, how this will be measured and a performance target(s). Target and actual performance influence asset management planning, particularly in relation to the timing and quality of maintenance, renewals and upgrade works.
- **Recommend:** s11(1)(b) is expanded to include the performance measures and information relating to past performance, including information against the statutory DIA non-financial performance measures [and their replacement].
- S11(1)(c)(ii) requires a description of water services infrastructure associated with “population growth and development capacity” rather than the underlying assumptions.
- WSDPs should specify the underlying forecast assumptions e.g. the authority’s housing growth and urban development objectives, changes in population [including decline], changes in demand and changes in levels of service. Some of which can be taken from spatial and growth planning studies.
- Care needs to be taken with growth data- it must not be based on the capital investment categorised growth in a Long-term Plan (LTP), which can be based solely on the useful lives of assets. Using the budget line from a LTPs tagged ‘growth’ will result in inadequate funding for water services to enable urban or industrial growth, reduced levels of service for new and existing customers and impact regulatory compliance.
- **Recommend:** s11(1)(c)(ii) is amended to require underlying assumptions to be specified.
- There is a lack of clarity with the expression “regulatory requirements” in s11(1)(d).
- To avoid ambiguity, and noting comments on definitions above, s11(1)(d) should set out the regulatory requirements and standards to be met, for example:
 - Obligations under the WS Act.
 - Health & safety obligations.
 - Directions issued by the Director General of Health, e.g. in relation to fluoridation.

- Resource consents conditions for:
 - Source water and takes
 - wastewater networks, overflows and treatment plants discharges, and
 - Stormwater diversion and discharges [and stormwater measures at a future date].
- **Recommend:** s11(1)(d) specifies the regulatory requirements and standards to be met.
- Insurance costs should be reflected in expenditure information provided in s11(1)(e).
- It is common for Councils to insure above-ground structures but not their pipe networks. Full insurance cover would be expensive, if attainable.
- **Recommend:** insurance is an explicit requirement of expenditure to be captured in s11(1)(e).
- S11(1)(g) requires a statement of the assessment of the current conditions, lifespan and value of the water services network.
- Valuing assets is a timely process. Considering the 12-month timeframe for submitting a WSDP, suggest the most recent value of assets a council has would be appropriate, and noting the date of the valuation. This would be pragmatic, as following the establishment of a new water services delivery vehicle a revaluation would likely be appropriate, particularly if there has been an aggregation of water services infrastructure across a number of Council regions.
- Similarly, with the condition assessment. The information provided should specify the quantity of water services infrastructure that is “known”, and the quantity where condition assessment is “unknown”, and the date of the assessment.
- **Recommend:** s11(1)(g) specifies the current “known” and “unknown” condition, lifespan and value of water services network, and dates associated with these.
- The expression “asset management approach” included in s11(1)(h) is ambiguous.
- We are uncertain that the intent of this clause is to capture whether the authority uses the NAMS International Infrastructure Management Manual (IIMM, 2015) or ISO 55000 Asset Management Standards as a guide, a comment on the maturity of asset management practices, or if an asset management information system is in place, or to specifically understand how renewals programmes are developed?
- **Recommend:** s11(1)(g) this needs further clarification.
- S11(1)(i) does not specify that the description of issues, constraints and risks should be both current and forward looking.
- It should be expanded to capture current and future knowns, and the degree to which future hazards and risks are unknown (e.g. as no investigation of sea level rise, or the next source of water, has been undertaken). This must include the risk of climate change on water services in the area to which the WSDP relates.
- Climate impacts mitigation, transition and adaptation presents the greatest risk and cost to water services delivery and financial sustainability. The 2019 National Climate Change Risk Assessment (“NCCRA”) identified risk to potable water supplies as the number one of the top 10 priority risks and risk to wastewater and stormwater systems within the top 10 risks. Investment in long term

resilience of the assets is prudent – and sustainable- as opposed to short-termism and the cheapest option.

- Looking ahead to when the water service delivery vehicles are operating they must have regard to national climate change risk assessments prepared under the Climate Change Response Act 2002. This should include requirements for production of, and annual reports against, a Climate Change Management Plan that includes:
 - Their current and projected whole of life emissions from infrastructure including an emissions reduction plan to get to a set emission reduction target
 - Impacts, risk & resilience – aligned with Climate Response Act Section 5ZW
 - Climate related financial disclosures –
 - Annual Greenhouse Gas Emission reporting by source
 - Reporting using the Task Force on Climate Related Financial Disclosures framework.
- **Recommend:** s11(1)(i) is expanded to require statement about current and future issues, hazards, constraints and risks including, but not limited to, asset deterioration, growth, climate, technology change, national security risks and capability and capacity of the workforce to deliver.
- S11(1)(k) only requires an explanation of the revenue from, and delivery of, water services to be separated from the authority’s other functions and activities.
- The concept of ringfencing should relate to all aspects of the water services delivery, including among other matters revenue, costs, borrowing.
- **Recommend:** s11(1)(k) requires an explanation of the full ringfencing of the water services delivery.
- S11(1)(m) includes a specific date – 30 June 2028. What is the intent of this date, which is tied to financial sustainability, and to compliance with regulatory standards and requirements?
- Considering the known non-compliances across the country – with resource consents and with obligations under WS Act – it is not feasible that sufficient investment will have occurred by 30 June 2028 to achieve full compliance.
- Does this date relate to when the authority must have the new water service delivery vehicle up and running?
- **Recommend:** the intent of the “explanation of what the authority proposes to do to ensure that the delivery of water services will be financially sustainable by 30 June 2028” is clarified.

Additional matters the WSDP should include

- The WSDP should include information that highlights the maturity in the provision of water services.
- The type of information that would highlight this includes:
 - Is there a customer contract?
 - What is the pricing arrangement – is there a volumetric charge, or does the authority charge via a rating mechanism?
 - What is the consumer complaints arrangement? How many water-based complaints are received, and their nature?

- Is there a compensation arrangement if levels of service are not met (refer to Watercare section of the Bill)?
- A workforce capacity and capability assessment. The water operator workforce is an aging one, what is the age profile in the region. Unlike electricians and plumbers there is no requirement for operators to be trained, except by requirements a water supplier may specify under its Water Safety Plan. This should be addressed when Taumata Arowai specifies the authorisations requirement under the WS Act.
- Network and demand management strategies – including metering.
- Has an assessment been made of critical assets, equipment, stores and people. This should align with work being progressed by the Department of Prime Minister and Cabinet.
- What charging policy will be adopted? Will a postage stamp pricing approach be adopted across the region covered by the WSDP (single rate, i.e. whether in Wellsford or Pukekohe the rate paid by consumers to Watercare is the same)?
- **Recommend:** the set of information required in contents of the WSDP is expanded to address the information specified above.

Ability to address additional requirements prescribed in rules

- No timeframe is provided for in s11(2).
- There is a risk that information required under s11(2) may not be understood in a timely manner.
- **Recommend:** Timeframe is added to s11(2), suggest 90 days prior to the submission deadline.

Period covered by, process for accepting a WSDP, Crown Facilitator and Crown Water Services Specialist

Period covered

- There is ambiguity in the period to be covered by a WSDP.
- The period covered by the WSDP starts with the 2024-25 financial year (section 13 (1)), but the submission of the plan may not occur until the end of the 2024-25 financial year, so the plan in effect will be for only nine years.
- A ten-year outlook for service delivery plans is too short a period to allow for an informed assessment of what is and isn't financially sustainable. A WSDP must be "not less than" a 10-years (s13), however the finances in the Plan are only required to be detailed for the first three years and outline for years 4-10. A WSDP which [rightly or wrongly] defers [physical and regulatory] maintenance and renewals to years 11, 12 and beyond could appear financially sustainable.
- Longer timeframes would better demonstrate the necessary financial planning and sustainability to delivery of water service assets. While long-term plans have a minimum planning horizon of ten years, they are also subject to a test of financial prudence that applies across the useful life of assets (and audit scrutiny for prudence).

- Water services infrastructure assets typically have 80-100 year design lives. Water services asset management plans and infrastructure strategies are produced for 30, in some cases, 50 years. Where required and in place spatial plans and development strategies have a statutory timeframe of 30 years. Councils should have 30 years information on the key service challenges, asset consequences and asset management programmes from the infrastructure strategy forming part of the 2024/34 LTP.
- **Recommend:** s13(1) is amended to require service delivery plans to cover a period of at least 30 consecutive financial years, recognising that there is greater certainty/detail in the first decade.

Acceptance process

- There is a lack of detail in the acceptance process information provided by the Bill.
- Is there sufficient capacity and funding made available to the Department to review and accept up to 67 WSDPs?
- What is the turnaround time councils can expect? Further, what turnaround time would be expected, if the Secretary requires a plan to be amended?
- What is the process for assessing viability that any plan is practical and doable to achieve financial sustainability and regulatory compliance before 30 June 2028?
- What if, despite input from Crown Facilitator, a Crown Water Services Specialist or the Commerce Commission a financially sustainable, is not achievable?
- There is no statutory obligation on the Secretary to carry out a review in a timely manner. As noted above, there will be considerable local interest in the decisions, authorities and communities require certainty as soon as possible. Note, there are likely to be flow on effects of delays not least in terms of addressing the infrastructure deficit but also for the Commission and the wider economic regulatory regime.
- **Recommend:** The Bill includes provision to recover the costs of reviewing WSDPs from the water service delivery vehicles providing the WSDPs.
- **Recommend:** The Bill should include a requirement for the Secretary to respond to WSDP within a defined period following receipt.
- Environmental regulators are missing from the set of parties required to be consulted.
- s18 (2) parties consulted when deciding whether to accept a water services delivery plan do not include the environmental regulator (i.e. regional councils)¹. In their roles as the environmental regulator regional councils (or by proxy Te Ura Kahika, representing the 16 regional and unitary councils) are essential to developing and approving plans. As environmental regulators, they must provide input as to the veracity of a WSDP and accordingly the ability of the territorial council to

¹ Taumata Arowai have oversight and are responsible for monitoring and reporting on the environmental performance of drinking water, wastewater and stormwater services. Regional councils will remain responsible for regulation, compliance and enforcement of source water takes and fresh, waste and storm waters quality.

meet all consent conditions relevant targets/standards set within the context of their regional plans and policy statement.

- Nor does it provide for specific statutory entities established to meet Treaty settlement obligations and to manage key waterways such as the Waikato River Authority (“WRA”) with respect to the Waikato River. Further entities such as the WRA have statutory authority and oversight of key waterways and therefore would have a perspective and right to feed into considerations of WSDPs.
- **Recommend:** Include environmental regulators and, where relevant, statutory authorities such as the WRA in s18(2).
- Decision to review WSDPs are solely at the discretion of the Secretary. This should be expanded to provide for third party reviews (e.g. Taumata Arowai, Commerce Commission) to work through disagreements related to the compliance of WSDPs between authorities and the Secretary.
- **Recommend:** expanding reviews of WSDP to include the regulators concerned.

Crown Facilitators, and Crown Water Services Specialist

- There is a lack of clarity on the expertise required to be a Crown Facilitator, or Crown Water Services Specialist.
- These people will be required to both understand water services provision and financial sustainability matters.
- Unclear when a Crown Water Services Specialist can be appointed.
- **Recommend:** include criteria on the expertise required to be a Crown Facilitator and Crown Water Services Specialist.
- **Recommend:** clarify when a Crown Water Services Specialist can be appointed.

Establishment, and subsequent transition to a full economic regulation regime

Monopoly regulation

- The future water services delivery vehicles will be local monopoly providers of water services. Water NZ supports the establishment of a water services economic regulatory regime for all water services – drinking water, wastewater and stormwater, and regardless of the delivery model.
- Water NZ appreciates that the arrangements set out in this Bill, are “foundational” with the full scheme to be fleshed out in “Bill 3” which is expected later in 2024.

Consistency with Commerce Act

- The purpose of Part 2, subpart 3 is consistent with Commerce Act 1986, Part 4, s52A(1). This is important. A critical component which underpins the Bill is that the water service delivery vehicles, whether Watercare, council controlled organisations or some other form of governance arrangement, will be able to raise additional debt to finance investment in water infrastructure services. Lenders will want to understand the legislative and regulatory framework and the

associated risks. Ensuring alignment with s52A Commerce Act will assist in mitigating perceived risks as there is existing legal jurisprudence and an understanding of how the Commerce Commission operates the economic regulatory regime across electricity, gas, telecommunications and airports.

Application of Foundational Information Disclosure

- Taumata Arowai and regional councils should also provide advice under s34(2).
- Minister for Local Government and Minister of Commerce and Consumer Affairs should also receive, and consider advice on whether a specific water services delivery vehicle should be subject to information disclosure from Taumata Arowai, and the relevant regional council.
- **Recommend:** amend s33(2)(a) to include Taumata Arowai, and relevant regional council.

Determinations (s37(3)) and Information Disclosure (s70)

- The set of information that the Commerce Commission may require to be disclosed under s37(3) and the Crown monitor may require Watercare to disclose under s70 are consistent. It is appropriate that the set of information is consistent. The organisations being regulated are providing the same services (albeit in Watercare’s case drinking water and wastewater, and other entities potentially stormwater as well).
- Consistency will, among other things, support an orderly transition from this “interim Crown monitor regime” to regulation by the Commerce Commission which will be specified in more detail in “Bill 3” due to be introduced later in 2024.
- The Bill does not set out a sunset provision for the Crown monitor. This creates a perception risk that there will be either no transition and therefore two water economic regulators and possibly regulatory systems.
- **Recommend:** Include sunset provision relating to the Crown monitor.

Crown monitor appointment

- s60 sets out who the Minister for Local Government may appoint to be a Crown monitor to Watercare². The Bill does not contain any criteria for this decision.
- The criteria should include:
 - Market credibility, independence, and operational experience of undertaking economic regulation in New Zealand.
 - Established staffing and resourcing experienced in creation and implementation of economic regulation to undertake tasks set out in Part 4 of the Bill.

² Options available to the Minister are

(a) an individual; or

(b) a Crown entity; or

(c) a company named in Schedule 4A of the Public Finance Act 1989.

- Opportunities to ensure and enable efficiencies, and certainty through appointment decision.
- Ensuring over the longer-term consistency with the purpose of promoting the long-term benefit of consumers of water services.
- **Recommend:** Include criteria for this decision.
- It is unclear whether the reference to an individual, as one of the options for the Minister to appoint as the Crown monitor, is to enable an individual within the Commerce Commission (e.g. like the Groceries Commissioner or the Telecommunications Commissioner) to hold this position.
- If the individual is a Commissioner within the Commerce Commission, there would be a smooth transition to the full economic regulatory regime under the Commerce Act and avoid the risk of inconsistencies referred to below.
- **Recommend:** the individual is a Commissioner within the Commerce Commission.

Potential for inconsistencies in approach

- There is a risk, should the Minister for Local Government not appoint the Commerce Commission, that the mitigations referred to above (consistency with Commerce Act) are unrealised.
- Including in Part 4, Watercare Services Limited the purpose contained in Part 2, subpart 3 is likely to support, in the eyes of lenders, the ability to draw on legal jurisprudence and operational experience of the Commerce Act.
- Suggest future lenders would likely be further reassured if the Commerce Commission is named as the Crown monitor.
- The absence of a clear pathway to transfer Watercare from the Crown monitor regime (if not the Commission) to a Commerce Commission established national regulatory framework, may equally create uncertainty for lenders with the possibility of two inconsistent regulatory frameworks operating in tandem or greater costs associated with transfer into one.
- **Recommend:** insert purpose clauses into Part 4, Watercare Services Limited. These should be consistent with s32 of the Bill.

Watercare charter

- s63(4) includes the Commerce Commission within the list of organisations the Crown monitor must consult when making each part of the Watercare charter.
- Similarly, s75 sets out the Commerce Commission's functions and powers in relation to Watercare's charter, providing comments to the Crown monitor.
- If the Commerce Commission is the Crown monitor, these requirements are unnecessary or circular.
- It is not clear under s63 how the charter can be changed.
- **Recommend:** amend s63(4)(d) to read, "...provided the Commerce Commission is not the Crown monitor".
- **Recommend:** include a provision in s63, clarifying the process for changing the charter.

- **Recommend:** amend s75 to read “If the Commerce Commission is not the Crown monitor...”.

Funding

- The Crown monitor’s expenses are recoverable from Watercare. It is not clear on what basis the Commerce Commission’s expenses in relation to foundational information disclosure and or its consultative role are recovered. Notwithstanding if it is not appointed as the Crown monitor, the Commission will likely still have to provide much of the back of house economic regulatory skills and resources required for an individual or other entity to undertake the role. The alternative of duplicating those resources would not be cost effective or efficient and would likely delay implementation of Part 4 under the Bill significantly as the resources were stood up.
- It is standard practice to recover the regulatory costs from the parties being regulated.
- **Recommend:** Include provision for the Commission to levy parties subject to foundational information disclosure or consultation requirements.

Te Ao Māori and Te Tiriti are notably absent

- Te Ao Māori (the Māori world view), the Te Reo Māori language, Te Tiriti o Waitangi, Treaty settlements, respect and acknowledgement of Māori participation, customs and protocols are notably absent from the bill. Similarly, any reference to the recognition and provision for Iwi/Māori rights and interests in water are not provided for.
- Will the various water service delivery vehicles established under the Bill be required to give effect to the principles of Te Tiriti o Waitangi / the Treaty of Waitangi and Treaty settlements? Will the Crown facilitators or Crown Water Specialists and Crown monitor and or Watercare be required to engage with affected iwi under the Bill?
- How will this Bill comply with obligations to provide for Iwi Māori contributions to decision making under s 81 of Local Government Act 2002?
- **Recommend:** provision is included in the Bill for future water service delivery vehicles to give effect to Te Tiriti o Waitangi, and current and future Treaty Settlements. Clarity is provided as to how respective roles will engage with iwi Māori affected by their roles and responsibilities.

Other concerns

What has precedence?

- Clarify what has precedence – significance and engagement policies under 76AA of the LGA or requirements under this Bill.

Regulator funding and sharing information

- The economic and water quality regulators (the Commerce Commission and Taumata Arowai) must be appropriately funded if the regulatory regime is to be effective.

- The economic regulator (Commerce Commission), and if the Commerce Commission is not the Crown monitor, the Crown monitor, water services regulator (Taumata Arowai) and environment regulators (regional councils) should, where appropriate, use or re-purpose information collected by the other agencies (collect once, use multiple times).
- **Recommend** the Bill includes provision for an industry levy to enable the costs of regulation to be recovered from future water service delivery vehicles.
- **Recommend:** the Commerce Commission, Crown monitor, Taumata Arowai and regional councils should be able to share information to reduce the regulatory burden on the water service delivery vehicles and Watercare.

Land use planning and avoiding building in hazard prone areas

- Recent flooding and storm events have illustrated an unambiguous need for land use planning decisions and choices to consider flood hazard risks. In many places, existing planning rules aimed at avoiding building on flood plains, protecting overland flow paths, requiring future-proofed stormwater management or including water-sensitive design are extremely weak or frequently overruled.
- The Bill provides clear direction that stormwater assets and services must be included in a WSDP.
- What is needed also, is a firm policy direction for a nationally consistent approach for land use planning controls and decisions to incorporate stormwater risk information.
- Policy to ensure the co-ordination of land use planning and the capital investment in water services is essential. Integration of drinking water, wastewater and stormwater network infrastructure construction and funding with urban development planning for economic and environmental water quality outcomes is needed. Co-ordination would provide sequence and certainty to investors, developers and suppliers.
- **Recommend:** The future water service delivery vehicles are an active participant in local spatial and land use planning.

Emergency management

- The emergency management relationship between the water services delivery vehicle, the council and central government needs to be clearly defined, particularly for large scale events beyond normal, or even contingency, funding and resource capacity.
- **Recommend:** clarify emergency management roles, responsibilities and relationships.

Alternative council-controlled organisations that will deliver water services

- It's not clear how the Government intends to give effect to its commitments to establish a separate class of financially separate, yet council owned council controlled organisation ('CCO') and whether there are any differences in the powers and accountabilities of these. Similarly, the revenue raising powers will not be known until legislation is introduced at the end of this year.

- Is a CCO created for the delivery of water services liable for tax on any profits?
- Will there be any restrictions on the payment of dividends to the owners of the CCO? While it seems unlikely that CCOs would seek to make commercial profits they may wish to run budget surpluses for a period of time to fund future works. Would such retained earnings be taxable?
- **Recommend:** these matters are clarified.

Bylaws

- Who has responsibility for general water services, trade waste, stormwater bylaws?
- Will Council's Water Services Bylaws responsibilities (setting, monitoring and compliance) be transferred over to the new water service delivery vehicles?
- **Recommend:** this matter is clarified.

Amendment Paper

- Many waterbodies across Aotearoa New Zealand are degraded and have been for some time. There is a general community desire and expectation that improvements in aquatic health should and must occur.
- There are community expectations that sewer overflows should not occur. Further, that such overflows should not result in beaches being closed, and other water bodies being unsuitable for recreational activity.
- There will be impacts of removing the Te Mana o te Wai hierarchy of obligations on the aquatic environment, as well as associated economic, community and cultural wellbeing impacts. The World Bank in 2019³ made the important connection of decreasing water quality with declining economic impacts. It is not clear whether such a situation in New Zealand will result in economic and reputational damage. However, there are real impacts on communities from black flags at beaches.
- Looking ahead, wastewater standards will provide certainty for all – water service delivery vehicles, planners, the supply chain, mana whenua and communities. This is important because in the next few years, a huge number of wastewater treatment plants consents are due for renewal.

Conclusion

Water NZ appreciates the opportunity to provide comment on the Local Government (Water Services Preliminary Arrangements) Bill. Water NZ would like to make an oral submission on this Bill. We look forward to continuing to work with the Government to refine and contribute to Local Water Done Well policy, regulation and delivery.

³ <https://openknowledge.worldbank.org/entities/publication/62065927-3aee-5d51-9a40-b172b6ac7a23>

If you have any queries in relation to this submission, please contact Nicci.Wood@waternz.org.nz

Ngā mihi nui

A handwritten signature in black ink that reads "Gillian Blythe". The signature is written in a cursive style with a large initial 'G'.

Gillian Blythe
Chief Executive