CENTRAL HAWKE'S BAY
DISTRICT COUNCIL

Late Items Strategy and Wellbeing Committee Meeting Agenda

Thursday, 7 July 2022

9:00am

Council Chamber, 28-32 Ruataniwha Street, Waipawa

Together we Thrive! E ora ngātahi ana!

Order Of Business

1 REPORT SECTION

1.1 ENDORSEMENT OF WATER SERVICES ENTITIES BILL SUBMISSION

File Number: **COU1-1411**

Author: **Doug Tate, Chief Executive**

Authoriser: **Doug Tate, Chief Executive**

Attachments:

1. **Central Hawke's Bay District Council Draft Submission on the Water Services Entities Bill** ⇩
2. **Draft Submission on the Water Services Entities Bill from Taituara** ⇩
3. **Draft Local Government New Zealand (LGNZ) Outline Submission on the Water Services Entities Bill** ⇩

PURPOSE

The matter for consideration by the Council is to confirm the content and direction of a submission on Governments Water Services Entities Bill.

RECOMMENDATION FOR CONSIDERATION

That having considered all matters raised in the report:

a) That the draft submission on the Water Services Entities Bill is endorsed as a submission to the Governments Finance and Expenditure Committee, with authority delegated to the Chief Executive to make final amendments prior to making the submission.

b) (Delete if not required) That the following further key points are added to the submission, with the Chief Executive having delegated authority to add and complete the submission:

a. Further point 1

EXECUTIVE SUMMARY

The Water Services Entities Bill (the Bill) will create four dedicated water service entities (WSEs) to deliver drinking water, wastewater and stormwater services. Government suggests that these entities will have the size and scale to deliver safer, more reliable and efficient water services, to increase investment in infrastructure and to meet the new regulatory standards.

The Bill outlines the key ownership, governance and accountability aspects of the WSEs including:

- asset ownership to remain with councils through a body corporate structure
- a Regional Representative Group co-governed by councils and mana whenua to provide strategic direction and monitor WSE performance
- a Board to provide corporate governance of each WSE and make decisions on priorities, asset management and operations.

It also outlines the arrangements that will support the transition of service delivery to the WSEs.

We recommend Council make a submission to the Finance and Expenditure select committee to raise issues around:

- Our local situation
- The preferred model being the Hawke’s Bay Water Services Model

- Local representation and accountability to communities
- Partnership with Manawhenua
- Pace of implementation
- Other matters – being the lack for early community consutation

Submissions on the Bill close 22 July 2022.

BACKGROUND

Three Waters reform programme

In 2017, the Minister of Local Government (the Minister) announced a review of three waters services (the review) in response to the findings of its Inquiry into Havelock North Drinking Water. The review found widespread issues across several aspects of three waters from system stewardship down to on-the-ground service delivery. In 2019, government embarked on its Three Waters Reform Programme with four key outcomes:

- safe, reliable drinking water
- better environmental performance of wastewater and stormwater services
- efficient, sustainable, resilient and accountable water and sewage services
- making it affordable for future generations.

Government continues to make steady progress on the reforms. It has reached the next major milestone – to enact legislation establishing super-regional Water Services Entities (WSEs) to manage the delivery of three waters services.

2017	Havelock North Drinking Water Inquiry identifies strategic issues with drinking water provision. Cabinet launches full review of three waters.
2018	Cabinet initiates cross-agency work to scope issues and opportunities around three waters system with a focus on funding, capability, and regulatory performance.
2019	Cabinet agrees three waters reform plan focused on regulatory reform.
2020	Water services regulation legislation passes establishing Taumata Arowai as sole, stand-alone regulator of drinking water in NZ (active March 2021).
2021	Government releases proposed approach to delivering water services. Working Groups established to provide sector/iwi input into entity design.
2022	Water services entities bill released for consultation with select committee report due in November 2022 and possible enactment shortly after.

Sector engagement

A draft Exposure Bill for the establishment of WSEs was released by government for sector input in 2021. In March 2022, a Working Group, comprised of councils and iwi, presented 47 recommendations to government to strengthen governance, representation and accountability for local communities.

The key Working Group recommendations were around:

- protecting public ownership of three waters assets
- strengthening representation and accountability for strategic three waters decisions.

The Government agreed in principle with the majority of the Working Group's recommendations.

Key Content of the Bill

The Bill had its first reading in the House of Representatives on 9 June and has been referred to the Finance and Expenditure Select Committee. Submissions close on 22 July 2022. The Select Committee report is due out 11 November 2022 with enactment probable by the end of 2022.

The Bill has incorporated most of the recommendations of the Working Group.

Purpose
The purpose of the Bill is to:

- establish the ownership, governance and accountability arrangements for water service entities (WSEs); and
- provide for the transition arrangements during the establishment period so that WSEs can commence service delivery from 1 July 2024.

Further legislation will be introduced in the second half of 2022 to transfer assets and liabilities from local authorities and to establish the specific powers and functions of WSEs re the provision of water services. This further legislation will also integrate the WSEs into other regulatory systems, such as the resource management and economic regulatory regimes.

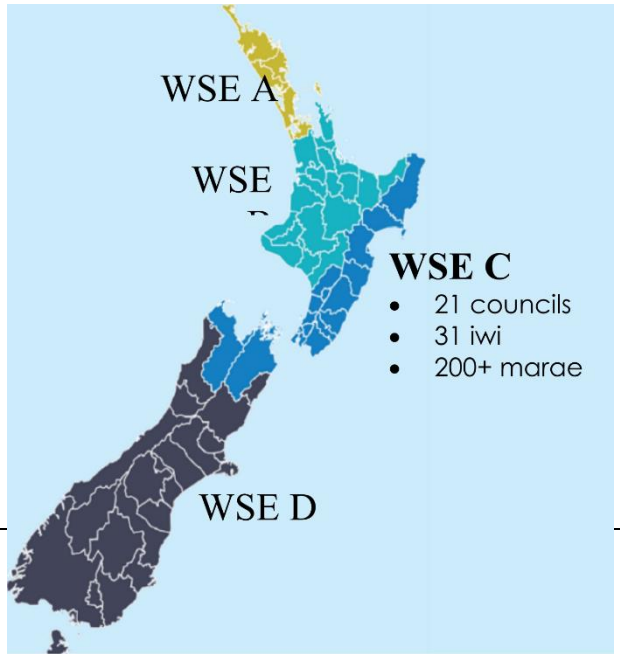
Ownership of WSEs
Each WSE will be a body corporate co-owned by the territorial authorities (district and city councils) within the WSE area. Shares in the body corporate will be allocated at a rate of 1 per 50,000 head of population rounded up so that every council has at least one share.

Central Hawke's Bay District Council will have one share in the body corporate.

For water services and/or significant water infrastructure to be divested, there must be a 100% consensus of the territorial authority owners, and at least 75% support from the Regional Representative Group, and at least 75% of votes cast in a poll of electors in the service area.

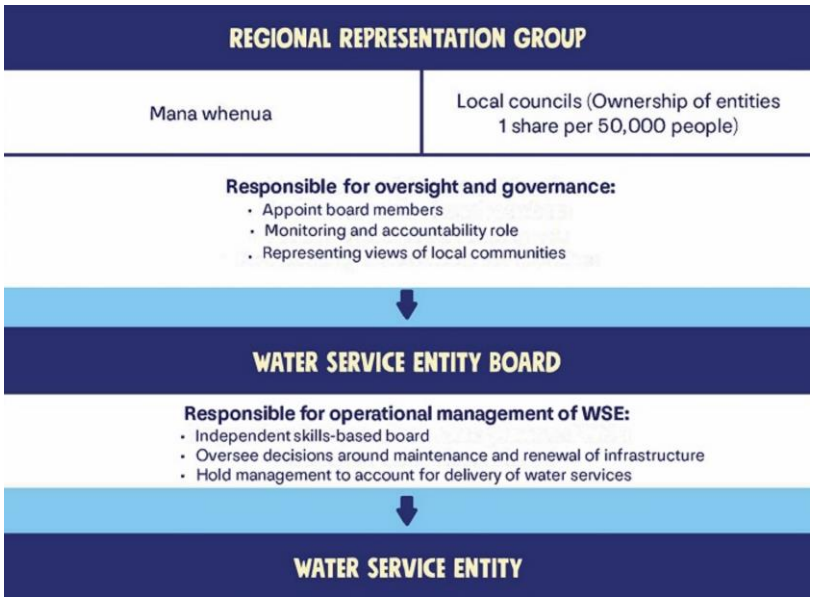
'Significant' assets are defined as those water assets the WSE owns that are critical to the WSE achieving its objectives and carrying out its functions.

Governance arrangements
There will be four 'super-regional' WSEs created as per the map below.



It is proposed that Central Hawke' Bay District Council will sit within the Eastern-Central WSE (previously called Entity C) along with 20 other councils and 30+ iwi (with over 200 hapū/marae).

The general functions of a WSE are to provide safe, reliable, and efficient water services in their service areas.



Regional Representative Groups
Each Regional Representative Group (RRG) will be comprised of 12-14 members, with a 50:50 split between representatives of the territorial authority owners and mana whenua representatives. Territorial authority representatives must be elected members, chief executives or senior members of staff with appropriate expertise.

The RRG will be responsible for:
- appointing and removing the WSE Board members
- providing an annual Statement of Strategic Performance Expectations to the WSE Board that states the RRG's strategic objectives and priorities for water services and that guides Board decision-making
- participating in setting the WSE's key strategic documents

- reviewing the performance of the WSE
- reflecting the long-term aspirations of their communities.

A sub-committee of the RRG will appoint/remove/replace members of the Board of the WSE.

An RRG can elect to establish one or more Regional Advisory Panels (RAPs) to provide advice about communities and water services in a particular geographic area. Membership of RAPs is to be a 50:50 split between territorial authority members and mana whenua members

WSE Boards

Each Board will be comprised of 6-10 members who, collectively, have expertise in performance monitoring and governance, network infrastructure, the principles of te Tiriti o Waitangi, and perspectives of mana whenua, mātauranga, tikanga, and te ao Māori.

The Boards will oversee the operational management of WSEs with a focus on the maintenance, renewal, and development of water infrastructure.

The Board will prepare an annual Statement of Intent with three parts:

- strategic elements that identify the outcomes the WSE is aiming to achieve and how the WSE intends to deliver its objectives and the performance expectations of the RRG and government policy statements (must be approved by RRG)
- operational elements detailing the nature and scope of work, significant work, responses to Te Mana o Te Wai statements, approach to consumer and community engagement and levels of service (RRG can provide input)
- financial elements showing forecast of expenditure to meet demand, improve service delivery and replace assets (RRG can provide input).

The Board will also prepare an asset management plan, funding and pricing plan and infrastructure strategy. It is required to engage with territorial authority owners, consumers and communities in the preparation of drafts of these documents before presenting them to the RRG for comment. It must consider the RRG comments and formally respond to them.

WSE Constitutions

Each WSE constitution must include:

- composition of the RRG including procedures for appointing representatives
- other procedures of the RRG including meeting arrangements composition and procedures of RAPs if there are any
- remuneration of RRG and RAP members
- composition and procedures of the WSE Board.

Constitutions may also include additional matters provided they are not inconsistent with the Act, for instance, skills and qualifications of representatives and Board members, additional monitoring and reporting, and review requirements.

The first constitution for WSEs will be set out in regulations. RRGs can replace the constitution at any time. Any replacement needs to be approved by the Minister.

Consumer fora

The Chief Executive of a WSE must establish at least one consumer forum to support the WSE with effective and meaningful consumer and community engagement. These fora can be for specific geographical areas or targeted interests but must reflect and represent the interests and diversity of consumers across the entity's region.

A WSE must prepare an annual consumer engagement stocktake to capture community and consumer feedback on services and performance and how the WSE will respond.

Transition (establishment period)

Governance and policy

The transitional provisions in Schedule 1 of the Bill have several key provisions related to the period before 1 July 2024.

The Chief Executive of a WSE must prepare an allocation schedule for their WSE that specifies assets, liabilities, and other matters that relate to the provision of water services and other services by relevant local government organisations.

The Chief Executive of the Department of Internal Affairs (DIA) may prepare an establishment water services plan for a WSE that outlines guidance for identifying the functions, staff, assets and liabilities to be transferred to the entity, and the proposed timing for the transfer.

The Chief Executive of DIA will provide comment on the first asset management plan and funding and pricing plan in lieu of the RRGs.

Local authorities must comply with reasonable requests from DIA to second staff to the WSE during the establishment period.

Staff employment

The chief executive of a WSE must offer existing council water staff a position of the same or a similar nature in the new WSE if the employee primarily undertakes functions that will transfer to the WSE, and the employee is not in a senior management role.

The positions offered must be no less favourable than the existing terms and within the same general locality.

DIA oversight

The DIA will have oversight of council decisions about or that may impact on the delivery of water services. This includes Long Term Plans and Annual Plans, other relevant policies, purchase or disposal of assets, and borrowing and service contracts that extend beyond a date specified by the Chief Executive of DIA.

During the establishment period, councils must provide DIA with information about an intended decision. The Chief Executive of the DIA may review any decision made during the establishment period.

Councils cannot implement a decision that might significantly prejudice the reforms or constrain their WSE from carrying out its duties without the written permission of the DIA.

DISCUSSION

Submission Content

With the Bill only recently being released and Councils meetings set for the remainder of the triennium, there is limited opportunity to formally present a submission to Council for their endorsement ahead of the submission closure date on 22 July 2022.

A draft submission has been prepared for Councils endorsement based on key areas where there has been considerable focussed discussion at the Elected Council table, points identified in previous correspondence to Government on the matter endorsed by the table and Councils decision of 9 December 2021.

It is important to note in the preparation of this submissions that there are many areas that are still unclear. This includes pricing, how the prioritisation of activities and projects will occur, and guaranteed levels of service community can expect. It is expected that these matters will be considered through further legislation being considered late in the 2022 calendar year.

The specific submission points that have been noted are:

Executive Summary
The submission notes that we are broadly supportive the outcomes the Bill seeks to change and agree the status quo is not an option. We then note the key points of the body of the submission.

Who is Central Hawke's Bay?
The draft submission notes that we are well informed as a Local Authority, having 'Faced the Facts' as part of the Long Term Plan 2021 – 2031, where Council and community now clearly understand the harsh reality of the necessary investment required for the future.

It further notes the significant affordability challenges that three waters investment creates and notes Financial Benchmarks that Council is unable to achieve, without significant hardship and affordability challenges that will significantly impact the wellbeing of community.

We note that the status quo is not an option.

The Hawke's Bay Water Services Model
The draft submission provides background and context to the Hawke's Bay model and outlines the key findings and outcomes of the review report. It states that the Hawke's Bay Water Services Model remains Councils preferred model.

The submission also notes that the Hawke's Bay model achieves many similar outcomes to that of the Water Services Entities Bill. Where we differ are the further following points that are noted below:

Local Representation and Accountability to Communities
The submission notes that Council has serious concerns that the Bill in its current format will not sufficiently enable local representation of and accountability to communities to occur.

It outlines Councils and the Sectors current and future key role as a strategic leader, based on values and relationships and how the current Bill does not provide for this or appear to give any future consideration to Councils role following the Review into the Future of Local Government. The key aspects that are noted in this aspect include:

- In the current Regional Representative Group (RRG) there is no guarantee of any representation of a District (either at a local or even regional level) in the current legislation
- There is a minimum establishment of one Regional Advisory Panel per region whose role is to give advice.
- There is nothing in the Bill that gives a requirement for WSE's, Regional Representation Groups or Regional Advisory Panels to legislatively acknowledge local plans or strategies such as Community Plans or Placemaking initiatives.
- A consumer forum is considered an appropriate tool to receive feedback and achieve feedback for communities.
- There is no direct line of sight or clarity on how communities can have confidence that things will be addressed when they go wrong.
- Centralisation of other services has failed rural communities like Central Hawke's Bay and only further widened rural and urban inequalities, especially for rural Maori.

Partnership with Manawhenua
The submission confirms that the Hawke's Bay model is consistent with the proposed Bill, in that it recognises and gives respect to Te Tiriti o Waitangi/the Treaty of Waitangi and genuine partnership with Manawhenua.

It further notes our successes have been through relationships with Manawhenua at local level, achieved kanohi kit e kanohi – face to face. We note that the Bill does not speak to how this same level of manaakitanga will be reciprocated with Manawhenua through either the new Entities or Governance structures.

We further note that it is inappropriate to treat Manawhenua as a homogenous group, as the Bill does our wider unique rural communities, being engaged and connected with through Regional Representation Group, Regional Advisory Panels and Consumer Forums.

Pace of Change

The submission gives note to the serious concern of the pace of implementation and the potential opportunity-cost simply due to pace.

The submission further notes that we have serious concerns that our communities will not be better off in the short to medium term (5 – 10 years) from the Bill. It notes we are concerned there are serious risks to our health and wellbeing as a result of poor implementation of the Bill and no guarantee that services will be to the same level or better on day one of the new water services entities operation on 1 July 2024.

The full draft submission is included in the attachment.

Support to Taituara and Local Government New Zealand Submissions

Taituara have prepared a comprehensive submission to the Bill focussing on aspects of the Bill. The full draft submission is in the Attachment. Broadly the Taituara submission:

- Recommends changes to Regional Representation Groups and Regional Advisory panels
- Changes to ensure transparency and accountability to community
- Changes to ensure entities and groups will be legislatively ensured and enacted to enable enhanced representation and ensure the voice of LG is heard

The Local Government New Zealand (LGNZ) submission is currently in an outline form, with a further detailed draft from this outline in development. This outline with detail can also be found in the attachments. In short the outline is comprehensive in its coverage, covering a significant number of areas including:

- Concerns around four entity model
- Community wellbeing must remain central
- Councils placemaking role is critical
- Transition should be phased
- Potential Staged approach to stormwater
- Te Mana o te Wai
- Central Policy direction must come with central investment
- Community need assurance of service when things go wrong and quickly
- Existing mechanism capturing local voice must feed in
- Feedback on Regional Representative Groups
- Feedback on Regional Advisory Panels
- Planning and strategic documents
- Funding and pricing
- Debt Transfer
- Community Engagement Provisions
- Protections against privitisation
- Transitionand implementation at a high level
- Connections with other reform programmes

Officers have included in Councils draft submission, that Council endorses and gives support to both the Taituara and LGNZ submissions.

At the time of writing, there is no clarity available on the content of the Communities 4 Local Democracy (C4LD) Submission for Councils consideration. This content will not be available until 8 July. On the basis of there being no clarity on the content of this submission, support for the content of the submission has not been noted in Councils submission at this time.

RISK ASSESSMENT AND MITIGATION

There are no obvious risks in this decision.

FOUR WELLBEINGS

The effective delivery of three waters services has wide ranging impacts of all four of the wellbeing's. This submission seeks to ensure that the successful delivery of the four wellbeing's, particularly in a Central Hawke's Bay context of Project Thrive our seven community wellbeing outcomes are achieved.

DELEGATIONS OR AUTHORITY

The Strategy and Wellbeing Committee have the authority and delegation to make this decision.

SIGNIFICANCE AND ENGAGEMENT

In accordance with the Council's Significance and Engagement Policy, this matter has been assessed as of some significance.

While a matter that is highly topical, this report does not present new material that is contrary to Councils previously stated strategic or policy positions.

OPTIONS ANALYSIS

Three potential options for Council to consider include:

Option 1 - Endorse the Submission
Endorse the draft submission, with delegated authority being given to the Chief Executive to make minor amendments.

Option 2 - Endorse the Submission with Changes
Endorse the draft submission, with delegated authority being given to the Chief Executive to make minor amendments, and further change points being noted by the Elected Council.

Option 3 - Not making Submission
Choose to not make submission.

	Option 1 **Endorse the Submission**	**Option 2** **Endorse the Submission with Changes**	**Option 3** **Not make a submission**
Financial and Operational Implications	There are no new or unknown implications for this decision.	Subject to the extent of changes this can be achieved.	There would be no implications.

Long Term Plan and Annual Plan Implications	There are no implications.	There are no implications	There are no implications
Promotion or Achievement of Community Outcomes	This option sees Council advocate for the Wellbeing of our community and seek the promotion of the outcomes community have mandated.	This option sees Council advocate for the Wellbeing of our community and seek the promotion of the outcomes community have mandated.	This option does not achieve the advocacy and leadership role expected of governance to promote or achieve the community outcomes sought through project Thrive.
Statutory Requirements	There are no statutory requirements.	There are no statutory requirements.	There are no statutory requirements.
Consistency with Policies and Plans	Making a submission ensures Government understands Councils position on matters. The submission brings Councils adopted policy positions to life through strategies and polices such as Tuhono Mai Tuhono Atu and Council Maori Contribution to Decision Making Policy.	Making a submission ensures Government understands Councils position on matters. The submission brings Councils adopted policy positions to life through strategies and polices such as Tuhono Mai Tuhono Atu and Council Maori Contribution to Decision Making Policy	It is unclear how this options supports consistency with Council policy and position.

Recommended Option

This report recommends **Option one – endorse the submission** for addressing the matter.

NEXT STEPS

Relative to the option that Council adopts, Officers will finalise the submission and submit this through the portal to the Committee.

We will also update the Council website with information of what has been submitted.

RECOMMENDATION

a) That the draft submission on the Water Services Entities Bill is endorsed as a submission to the Governments Finance and Expenditure Committee, with authority delegated to the Chief Executive to make final amendments prior to making the submission.

b) (Delete if not required) That the following further key points are added to the submission, with the Chief Executive having delegated authority to add and complete the submission:

a. Further point 1

Central Hawke's Bay District Council
Submission on Water Services Entities Bill

Executive Summary

1. We do not support the Water Services Entities Bill in its current format, despite being broadly supportive of the outcomes the Government seeks to achieve through the Three Waters Reforms.

2. We agree that the status-quo for the long-term sustainable management of three waters services is not an option. In our own community, we have and will continue to face significant intergenerational challenges across our three waters activities, achieving ever increasing regulatory and health standards, while managing the impacts of affordability and community wellbeing.

3. We do not support the current number of Entities the Bill establishes, with there being no reflection of regional communities of interest such as Hawke's Bay.

4. We believe the Bill in its current format seriously jeopardises the voice of community, threatens local democracy, accountability and representation, and that the Bill as a minimum should at least retain or strengthen this aspect for communities.

5. We believe that the current balance of authority and local decision-making between local community and the Water Services Entities in the Bill is distorted. We believe the proposed entities should be servants to local resource management and planning at a community and local level, not the other way around.

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

7. As a Council, we make this decision fully informed and with a very clear understanding of the significant and confronting investment that is required across our three waters activities, as identified in our Long Term Plan 2021 – 2031 'Facing the Facts'[1]. This has required our Financial Strategy[2] to exceed our rates affordability benchmark , our Quantified Limit on Borrowings and also impacted our ability to achieve a Balanced Budget for nine of the ten years of the 2021 – 2031 Long Term Plan.

8. We have a credible alternative to the proposed model in the Bill. Central Hawke's Bay as part of the wider Hawke's Bay Water Services Model[3] made a compelling case to Government that a Hawke's Bay Water model could achieve the outcomes sought from the Water Services Entities Bill. The Hawke's Bay model remains Central Hawke's Bay's preferred model of future water services delivery,

9. We are not convinced and are seriously concerned that the Bill does not successfully capture or reflect the essential need for and role of local representation, we were able to achieve in the development of the Hawke's Bay Water Services Model.

10. We also have serious concerns about how the proposed operating model in its current format in the Bill will achieve true accountability to communities and Manawhenua when things go wrong.

11. We are also unconvinced that the Bill goes far enough to secure and maintain the local democratic voice and the role of Local Government and Manawhenua as community leaders through the establishment of the Regional Representation Groups or Regional Advisory Panels.

[1] https://www.chbdc.govt.nz/assets/Links/002923-Full-LTP-2021-2031-aSCN.pdf
[2] See pages 107 – 112 of the CHBDC Long Term Plan 2021 – 2031 – 'Facing the Facts'
[3] https://www.hb3waters.nz/hb-three-waters-review/full-report-and-cases/

12. We do not have confidence that the future outcomes from the Review into the future of Local Government have been considered in the drafting of this legislation.

13. We do not support that there is currently no legislative link in the Bill to how either Water Service Entities, Regional Representative Groups or Regional Advisory Panels have to acknowledge and incorporate local community wellbeing outcomes set at a local government level or wider planning outcomes (such as Community Plans[4] or Placemaking Plans).

14. We believe that any suggestion that the use Consumer Panels as described in the Bill (Cl. 203) as a means of engaging with community, is ineffectual and flawed in comparison to the role and benefits that Local Government currently provide.

15. We do not support and are seriously concerned about the pace of implementation of this Bill, its further legislation that is yet to be drafted and the impact that this will have on our community and communities like ours. This reform is a once in a generation transformational change that is being rushed at the cost of community outcomes and wellbeing.

16. The delivery of a 'minimum viable product' approach in the Bills implementation gives no confidence that communities or our environment will be better off in the short to medium term (at least 5 – 10 years) from this Bill. A phased approach to transition should be adopted.

17. In summary, we do not support the Bill in its current format , despite broadly supporting the outcomes the Governments Water reforms seek to achieve. In particular, we are seriously concerned that the Bill does not ensure local voice, representation and ultimately accountability for the communities the Entity will serve, while also ensuring the standards delivered to communities today are not eroded.

Who is Central Hawke's Bay?

18. Central Hawke's Bay District Council is a small, largely rural Council servicing the communities of Tamatea – Central Hawke's Bay. Like many Councils of our size, we face increasing challenges to serve the needs of our communities, while balancing the constraints of affordability and resource limitations. This balance and pressure are exemplified in Council's delivery of three waters services, as well as many other activities.

19. Central Hawke's Bay District Council has a long history of challenges with three waters services and their delivery. Council has invested significantly, in both people and plant to continue to deliver against the expectations of our community and key stakeholders (including Regulators).

20. Councils 2021 – 2031 Long Term Plan – 'Facing the Facts' , built upon work that commenced in 2016 to 'face the facts' of aging, failing and underperforming infrastructure in the District. Enhanced asset management sophistication, built upon improved asset condition, performance and community requirements has resulted in a radically different investment programme that those Council was considering in only 2018. These investment programmes take Council to the edge of our financial and resourcing limits, and will test community affordability long term.

21. Central Hawke's Bay is experiencing a surge of optimism and positivity not seen since the 1960's, with unprecedented growth and development, buoyed by a clear values based strategic vision, Project Thrive[5], that clearly articulates our Districts vision for the future.

22. Based on current demographic projections[6] Central Hawke's Bay's population will double inside the next 20 years, placing further strain on an already aged infrastructure network that is already at capacity. In response, Council has pulled every financial lever available to it, including

[4] Takapau Community Plan as an example https://www.chbdc.govt.nz/assets/Uploads/Takapau-Comm-Plan-2020-FINAL5-0.pdf
[5] https://www.chbdc.govt.nz/our-council/about/project-thrive/
[6] https://www.chbdc.govt.nz/assets/Document-Library/Responding-to-Growth/Demographic-and-Economic-Growth-Projections-CHBDC-2022-Update.pdf

increasing development contributions over 1200% in the last two years, ensuring that those creating the cost of development are paying their fair share. Council have also ambitiously sought external funding to support growth from agencies and funds such as Kainga Ora's Infrastructure Acceleration Fund to support development and heavily leveraged the use of development agreements where possible.

23. The brutal financial reality of the significant investment required in the districts three waters assets and outlined through the 2021 – 2031 Long Term Plan 'Facing the facts', is nothing short of confronting. Councils Financial Strategy[7] through the Long Term Plan, will see debt grow to $98 million by year 10 of the 2021 – 2031 Long Term Plan, to deliver some $285 million of capital expenditure and require average rates increases through the life of the plan of 7.8% over the ten years.

24. Such is the extent of borrowing required for three waters service upgrades that by Year 4 of the 2021 – 2031 Long Term Plan, Council will breach its current Treasury Policy and will need to adjust its debt to operating revenue cap of 150% to align with the Local Government Funding Authority's 175% cap. However, by year five even this cap will be breached. Therefore, Council has assumed in its prospective financial statement modelling that Council becomes a Tier One Council with the Local Government Funding Agency (LGFA) and revises its Treasury Policy to allow Council to borrow to 200% of its revenue. To allow this to occur, Council would need to obtain a credit rating from a credit agency such as Standards and Poors. Once this is obtained, the LGFA would allow borrowings of up to 250% of revenue

25. For Council, in the event the Hawke's Bay Water Services Model was implemented, the new Regional Council Controlled Organisation would have sufficient balance sheet capacity to resolve Councils balance sheet capacity issues locally, without requiring any formal balance sheet separation from Councils across the region.

26. Other options Council considered in its Financial Strategy but discounted due to the undesirable outcomes on the community, or the uncertainty were:

- Require a capital contribution towards the construction of the new wastewater treatment plants from every connected property. This would be in addition to the ongoing annual rates each property pays. This capital contribution would be utilised to complete the capital programme without incurring further debt.
- Rely on intervention from Central Government through the Three Waters Reform Programme that would alleviate Councils three waters debt.
- Halt the infrastructure upgrades it proposes and seek an alternative funding avenue before continuing with the upgrades.

27. While considered at the time, the Hawke's Bay Water Services Model was identified also as an alternative to the Three Waters Reform Programme. The Programme would have allowed the regionalisation of charges within seven years to occur, thereby significantly reducing the rates increases required.

28. Councils Financial Disclosure Statements for the 2021 – 2031 Long Term Plan[8] paints a further picture of the challenge the District faces in adequately investing in its three water services. Over the life of the 2021 – 2031 Long Term Plan, Council proposes to:

- Exceed its Rates Affordability for seven of the ten years of the Plan,
- Exceed its Quantified Limit on Borrowing for six of the ten years of the plan
- Not achieve a balanced budget over the life of the Plan

[7] See Pages 134 – 157 Central Hawke's Bay District Council - 2021 - 2031 Long Term Plan 'Facing the Facts'
[8] See Pages 108 -113 Central Hawke's Bay District Council - 2021 - 2031 Long Term Plan 'Facing the Facts'

Despite significant asset management improvements, it is likely that further capital and operating expenditure will be required as further environmental and regulatory standards continue to increase.

29. In making this submission, Central Hawke's Bay District Council is critically aware of the challenges ahead and is a well-informed Council.

30. Having been a leader in the development of the Hawke's Bay Three Waters Service Model, it also clearly understands the trade-offs and opportunity of what could be achieved through reformed three waters activities.

The Hawke's Bay Water Services Model

31. Beginning in 2019, Central Hawke's Bay District Council, Hastings District Council, Hawke's Bay Regional Council, Napier City Council and Wairoa District Council, worked together to review the current and potential three waters (drinking water, wastewater and stormwater) service delivery options for Hawke's Bay, Te Matau-a-Māui. Guiding our review and assessment of the options were a set of agreed objectives and principles.

32. The Hawke's Bay Water Services Model was a Hawke's By regional entity, with a legal basis as a Council Controlled Organisation, with a joint committee oversight by Councils and Manawhenua, and an independent skills-based board. The scale of ownership, management and implementation could provide balance sheet expansion, regional cross subsidisation and professionalisation of workforce and an approach to procurement, consenting and delivery that could be achieved across 4 councils, not the 20+ Councils of Entity C.

33. Supported, both in principle and through funding from this Government, the key findings and recommendations of the Hawke's Bay Three waters review report confirmed:

- Making no changes to the way our three waters services are delivered is not affordable or sustainable
- Meeting the new regulations under current service delivery arrangements poses significant affordability challenges for our region and particular our smaller councils
- The Review's forecast investment in three waters infrastructure across the region to meet new drinking and waste waters standards is estimated to at least double since councils' 2018-2028 Long Term Plans from $313m to $605m
- Five service delivery options were shortlisted and considered against regional objectives and cultural principles
- An asset owning council controlled organisation was the preferred service delivery model as it best met Councils' investment objectives and the cultural principles developed collaboratively with Councils' Māori Standing Committees. In particular, the model:
    - Addresses regional affordability challenge associated with new standards and regulations
    - Is able to concentrate its investment on three waters priorities
    - Delivers the scale required to create strategic capacity and capability
    - Enables a meaningful role for Māori (including co-design and governance)
    - Enables improved operations (risk management, asset management, ability to meet compliance requirements
    - Produces the greatest savings

34. In June 2021, the Government released its proposal to establish four regional water entities, where Hawke's Bay three waters services would transfer to a regional entity comprising of 21 councils from the East Coast of the North Island to the top of the South Island and the Chatham Islands.

35. To help inform our assessment of the Government's three waters reform proposal, the financial analysis completed for our review was updated, and the Government's own modelling

(completed by the Water Industry Commission for Scotland (WICS) was analysed. The Financial Analysis[9] Update and the Review of the WICS Data for Hawke's Bay [10], both completed in mid-2021, both confirmed that despite there being differences in the analysis of the data, both sets of data were directionally consistent. This analysis conducted in 2021, also showed that even with a doubling of forecast capital investment in Hawke's Bay, the new Hawke's Bay Regional Water Services Entity would still not require balance sheet separation, and therefore still achieve the governments primary objectives of balance sheet capacity without requiring the scale of Entity C.

36. Despite the Government's decision to mandate the Three Waters reform proposal in October 2021, the Hawke's Bay Water Services Model has remained the preferred model of Central Hawke's Bay District Council, with regional support from our Hawke's Bay Councils.

37. While we remain committed and supportive of the Hawke's Bay model, it is important to note the Water Services Entities Bill has many of key aspects that are achieved by the Hawke's Bay Model. Where we substantially differ are on the following points.

Local Representation and accountability to Communities

38. We are not convinced that the proposed Entity and Governance structures outlined in the Bill will sufficiently enable local representation of and accountability to communities to occur.

39. We do not support the establishment of the four entities outlined in Schedule 2 of the Bill, which have limited or no resemblance to natural groupings, regional communities of interest or localities in which communities operate. Our preferred model remains that of the Hawke's Bay Water Services Model, where representation and accountability is delivered at a Regional Level through communities of regional interest.

40. We do not support and or agree that a centralised four-entity model will benefit our community. . Centralised Government service delivery models to date have only exacerbated the rural and urban community divide in our district. Examples include reduced investment in land transport infrastructure investment from Waka Kotahi on rural roads from a centralised policy model, and we have seen the dramatic decline in rural services such as healthcare services, which have further widened the inequity gap, particularly for rural Maori in our community. The current representation and accountability model set out in the Water Services Bill only further perpetuates and reinforces this inequity and divide for communities and rural Maori in particular.

41. We do not support the proposed ownership and shareholding structures of the new Water Services Entities in Cl. 15 and 16 of the Bill. Our preferred model remains a Council Controlled Organisation (CC0) as outlined in the Hawke's Bay Water Services Model, where representation can be led through regional communities of interest, still providing for aggregation at a National Level. The current ownership and shareholding structures in Cl. 15 and 16 of the Bill provides the basis for the dismantling of the democratic structures that provide representation, a voice for democracy and accountability to local communities that government (both Central and Local) serve.

42. To this end, we also do not support the representation structures outlined in the Bill through Regional Representative Group and Regional Advisory Panels in Subpart 4 – Regional Representative Groups and Subpart 5 – Regional Advisory Panels. Based on the current shareholding to provide one vote as a shareholder across an entire entity, gives no confidence a region, let alone a district has any ability to have fair presentation or a regional voice for their community through this structure. Further, the current Bill is weak in setting down any minimum standards for representation, other than the establishment of one (1) regional advisory panel per water services entity (Cl. 45 (1)). Even with the establishment of a proposed Consumer Forum (Cl.203) by the Water Service Entity, the Bill provides little confidence that community voice will

[9] https://www.hb3waters.nz/assets/Uploads/2021-Financial-Analysis-Update.pdf
[10] https://www.hb3waters.nz/assets/Uploads/Review-of-WICS-Data-for-Hawkes-Bay.pdf

be at least retained or strengthened. Again, we strongly urge the Committee to consider what a more regionalised community of interest model could be, that could still be aggregated nationally, however would address the fundamental issues relating to shareholding, ownership and representation issues that will result from the Bill in its current format.

43. We implore that the Bill gives a specific focus to ensuring Water Service Entities remain servants to local community voice and outcomes. A fundamental ideology shift is required in the Bill to ensure that proposed governance and management structures remain servants to the vision, aspirations and outcomes sought by Local Communities – not the other way around. The ideology that local community voice and identity must comply or be lost as a result of government service centralisation, has been a fundamental failure of previous government agency centralisations, and will be a further failure of this Bill if not amended.

44. Imploring that Water Service Entities remain servants to local community voice and outcomes also recognises the important role of local Government as local placemakers and leaders, not currently recognised in the Bill. Local Government is best placed to play a key role in providing representation and accountability mechanisms in local communities to the Water Service Entities. Local Government already plays an important role in collating and supporting a sense of community and wellbeing, across our communities. Reflected in community values-based strategy such as our own Project Thrive[11] and Community Plans[12], Local Government takes nationally directed guidance such as the Four Wellbeings, and right sizes and fits this aspiration to a local community context. Further supported with elected members where representation is democratically elected every three years and also reviewed in its make-up and form every three years, Local Government provides an opportunity for local democracy, voice and accountability to an extent much greater than that proposed in the Bill.

45. As a District we have worked hard to establish our strategic contexts to achieve a thriving future for Central Hawke's Bay with community, in a united way in partnership with Central Government agencies, Manawhenua and Community. The Bill gives no certainty or confidence to the interface between the Regional Representation Groups and the Regional Advisory Panels and Councils - who remain best placed to strategically plan, advocate for and liaise on behalf of their communities with Regional Advisory Panels.

46. We also do not support the establishment of consumer forums as a suitable and adequate method of meaningful community engagement as set out in Cl. 203 of the Bill. The standard of engagement included in the Bill is substantially less than the standard currently required of Local Government for meaningful engagement with communities or that in which communities currently receive. The Bill should set the same or better standard for engagement the community currently receive. Recognising the complex, inter-related and locality specific way in which Local Government currently engages with Communities, any suggestion that this function can be replaced as outlined in the current Bill to result in improved engagement, communication and feedback with and from communities is flawed. This is a fundamental role of Local Government and any suggestion Water service Entitles are the best organisation to deliver this, is ineffectual and flawed in comparison to the role and benefits that Local Government currently provide.

Partnership with Manawhenua

47. Consistent with our Hawke's Bay model, we support the recognition and respect of Te Tiriti o Waitangi/the Treaty of Waitangi and the genuine partnership with Manawhenua as a true partner as described in the Bill.

48. We do not support however that the same representation structures in the Bill that provide for wider community representation, through Regional Representative Group and Regional Advisory Panels in Subpart 4 – Regional Representative Groups and Subpart 5 – Regional Advisory Panels will provide sufficient representation or accountability to Manawhenua either.

[11] https://www.chbdc.govt.nz/our-council/about/project-thrive/
[12] https://www.chbdc.govt.nz/assets/Uploads/Takapau-Comm-Plan-2020-FINAL5-0.pdf

49. Tamatea – Central Hawke's Bay - while still in its infancy, has made solid progress in our relationships with Manawhenua in the establishment of our Maori Engagement Strategy Tuhono Mai Tuhono Atu, particularly on addressing long-standing issues relating to wastewater consenting and treatment. This has been achieved through a uniquely 'Tamatea-Way'[13] and approach, that has focussed on Governance to Governance korero and hui, achieved kanohi ki te kanohi – face to face. The Bill does not speak to how this same level of manaakitanga will be reciprocated with Manawhenua, with the proposed Governance structures in place. Again, a regionalised community of interest model, providing for local voice and democracy could address this issue.

50. We also do not support that the Bill treats Manawhenua, as a homogenous grouping that can be engaged through a Regional Advisory Panel. Already limiting the role of Manawhenua in this capacity, limits the potential for further partnership for Manawhenua as part of the wider opportunities for the future of Local Government, particularly when considered in the wider context of delegation and devolved decision making that could occur through a widened Mana Whakahono a rohe agreement for example.

Pace of Implementation

51. We are seriously concerned that the proposed pace of implementation of the Bill, with further legislation yet to be drafted and many areas of the Bill yet to be fully scoped, puts at jeopardy the wellbeing of our community. This transformational opportunity is a once in a generation opportunity to achieve the intergenerational step-change in services and investment required across not just our District, but the wider sector.

52. We have concerns and very limited confidence that our communities will be better off in the short to medium term as a result of the Bills implementation, with no clarity on what services and outcomes communities can expect to see on day one of the Water Service Entities new operation.

53. The proposed delivery of a "Minimum Viable Product" in the short to medium term gives no confidence that communities or our environment will be better off in the short to medium term (at least 5 – 10 years) from this Bills implementation. Already with a multitude of inter-related and complex reform programmes underway, resource and material shortages and unprecedented growth, the risks to wellbeing and health from a poorly executed implementation are too high.

54. We recommend that a phased approach to transition should be adopted. This phased approach would provide both the Water Service Entities and the Transition Units opportunities to share lessons learnt, and to pilot the implementation of the Bill.

Other matters

55. We remain disappointed at the Governments approach to not widely consult with the general community ahead of the introduction of this Bill. While there is no disagreement that something must change for the future of our communities three waters services, we disagree with Governments approach to formulating this legislation without the clear input and guidance of communities that they serve in advance.

56. We welcome the opportunity to speak to our submission to further reiterate and impart on the Committee, the significance of this Bill and its impacts on not only the future of Local Government, but the future of local democracy, accountability and representation.

[13] See pages 26 – 29 of the Central Hawke's Bay District Council - 2021 - 2031 Long Term Plan 'Facing the Facts'

Submission of
Taituarā – Local Government Professionals Aotearoa
regarding the
Water Services Entities Bill

NOTE TO THE DISCUSSION DRAFT

This document is a draft of the Taituarā submission to the Finance and Expenditure Select Committee regarding the Water Services Entities Bill. This draft has been produced for discussion with local authorities and with the approximately 1000 individual members of Taituarā.

A word about the role of Taituarā as a member managerial organisation. It is not for Taituarā as a managerial organisation to take a political stance on the legislation. And the draft that follows does not. Our role is to ensure that the consequences of the Government's policy decisions are spelt out in an apolitical and neutral way. Equally it is our role to ensure that the final policy decisions, whatever they may be, are designed in a way that they can be practically implemented to best effect.

The draft that follows is not the final Taituarā submission. The comments and recommendations that follow are not, and may never be, Taituarā policy. The final approval of this submission rests with the Taituarā Executive.

Taituarā welcomes comment on any aspect of this document – particularly those matters you consider have been missed, or where you take a different view. Of course, we will expect you to support your views with supporting evidence and argument.

There are six discussion questions throughout the document where we would particularly welcome views. These are:

1. Are there any other matters of a general nature that Taituarā should raise in Part One of its submission? If so, what are they?
2. What are the benefits and disadvantages of the shareholding model is set out in clause 16 of the Bill? Has your council expressed any views on this model of ownership or the collective model i.e. all territorial authorities are joint, several and equal owners?
3. Would you support empowering WSEs to allow for the appointment of non-voting observers from central government and/or regional councils to an RRG? Why or why not?
4. Are there linkages between this Bill, the WSEs and other legislation that you consider have been missed? If so what are they, and are these issues that must be addressed now r can they wait for the second Bill?
5. Are there any other matters that you'd like Taituarā to include in its submission on this Bill? If so, what and why is this important?
6. Are there any matters in this draft that you consider Taituarā should exclude from its final submission? If so, then what matters should be removed and why?

Providing feedback

To provide feedback on this document please email our Chief Adviser, Raymond Horan at raymond.horan@taituara.govt.nz by **5.00pm** on **Wednesday 13 July**.

All feedback must be in writing and originate from either from a valid council email address or a valid council postal address.

CONTENTS

LIST OF RECOMMENDATIONS

Purpose of the Legislation

1. **That the Select Committee separate the clause into a clear statement of purpose and a statement of how the entities should give effect to that purpose.**

Customer Relationships

2. **That the Select Committee consider how it will assure itself that customer-facing issues and matters regarding the links to land use planning will be satisfactorily resolved before it reports on this Bill.**

Privatisation

3. **That the Select Committee support entrenchment of the provisions that set out the requirements for any disposals of a WSE to proceed.**

Peer Review of the Regulatory Impact

4. **That the Select Committee commission an independent analysis of the cumulative impacts of the Bill from an expert in regulatory economics or institutional economics as part of its scrutiny of the Bill.**

Shareholding

5. **That the Select Committee amend clause 16 to clarify whether the census night population or the usually resident population counts should be used for determining local authority shareholding.**

Government Policy Statement: Water Services

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

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

8. **That the Select Committee amend clause 134 to read "When performing its functions a water services entity must give effect to any Government policy statement issued under section 129."**

9. **That the Select Committee amend clause 131(b) by replacing the word 'consult' with the words 'engage in a way that gives effect to the requirements of clause 202'**

10. **That the Select Committee amend amend clause 131(b) by adding local authorities to the list of named parties for engagement**

Objectives of Water Services

11. **That the Select Committee provide guidance that WSEs are expected to manage conflicts in an open, transparent and accountable manner either as one of the operating principles of clause 13 or in 'giving effect to the objectives clause' as per recommendation 6 above.**

12. **That the Select Committee place WSEs under an obligation to consider ways in which they can help foster the development of Māori capacity to contribute to the governance and decision-making processes of the WSE.**

Regional Representative Groups

That the Select Committee:

13. **add a requirement that the territorial representatives to RRGs be broadly representative of the different mix of metropolitan, provincial and rural territorial authorities to clause 32**
14. **add a requirement that appointment procedures for the territorial authority representatives for RRGs give effect to the requirements that RRG membership be broadly representative of the different mix of territorial authorities**
15. **empower WSEs to allow for the calling of a annual shareholders' meeting by amending clause 91**
16. **empower regional representative groups to, at their discretion, invite the Crown to appoint a non-voting observer to attend all group meetings**
17. **empower regional representative groups to, at their discretion, appoint a non-voting observer or observers from a regional council in entity's service area**

18. **empower regional representative groups to, at their discretion, appoint alternates to perform the roles of members of the group when they are absent.**

Regional Advisory Panels

That the Select Committee:

19. **place the RRGs under an obligation to seek advice from regional panels when developing a Statement of Strategic and Performance Expectations, when commenting on an infrastructure strategy, when commenting on a funding and pricing plan, and when approving a board appointment and remuneration policy**
20. **amend the collective duty of a regional advisory panel to advocate for the interests of its local area, having had regard to both the interests of the local area and wider WSE service area**
21. **provide those designing or determining regional advisory panel arrangements be with a set of statutory criteria to have regard to**
22. **add provision requiring the RRGs to regularly review their regional advisory panels (including provision for an initial review before the wider review of governance and accountability in clause 195).**

Tenure of Office for Regional Representative Group and Panel Members

That the Select Committee

23. **add a clause clarifying that RRG members hold office only while they satisfy the requirements of clause 27(3)**
24. **clarify that RRG and board members must notify the WSE Chief Executive as soon as practicable after ceasing to be eligible to hold office as an RRG or board member as the case may be.**

Skills for the Board Appointment Committee and Entity Boards

That the Select Committee agree to:

25. **amend clauses 38(2) and 57(2) by replacing the words 'network infrastructure' industries with the words 'water services industries'.**
26. **amend clauses 38(2) and 57(2) by adding the words 'customer service and customer engagement' to the list of skill sets.**

Appointment and Remuneration Policies

That the Select Committee add further provisions to clause 40 that:

27. require that appointment and remuneration policies set out policies on the provision of training and professional development of entity board members

28. require that appointment and remuneration policies be reviewed at least once in the term of each RRG

29. require the publication of board appointment and remuneration policies on an internet site maintained by the WSE

Disqualifications from Membership

The Select Committee:

30. amend the Bill to preclude regional council members, local and community board members from membership of a WSE board

31. amend the Bill to preclude a local authority Chief Executive or an employee of a local authority from membership of a WSE board.

Transparency and Access to Meetings

That the Select Committee:

32. replace the minimum number of public meetings that WSEs must hold with a requirement that the WSE hold such meetings as are necessary for the good governance of the entity and

33. require that all meetings of the WSE be held in public except where provided for by section 47 of the Local Government Official Information and Meetings Act 1987.

Funding and Pricing Policies

That the Select Committee:

34. amend clause 150(2)(a) to set a legislative timeframe of 30 years for the FPP

35. amend clause 151 to add a requirement that the WSE boards consider affordability for individuals and groups of individuals in developing their funding and pricing plans and document the results of that consideration

36. add a requirement on the WSEs to set limits on their revenues and borrowing as part of their financial strategy

37. delete clause 151(2)(b) as redundant

38. amend clause 151(2)(c) by deleting redundant references to equity securities

39. require each WSE to supply the Commerce Commission with a copy of the funding and pricing plan.

Infrastructure Strategies

40. That the Committee add a further clause after clause 154(2) that requires disclosure of the WSE's assumptions regarding
(i) the condition and useful lives of significant assets
(ii) the levels of growth and demand for water services and
(iii) changes to levels of service.

41. That each WSE be required to publish the methodologies it uses to establish asset condition and estimate the level of growth and demand for water services.

Asset Management Plans

That the Select Committee amend the Bill by:
42. requiring WSEs to prepare an asset management plan of at least 30 years duration for its infrastructure assets and publish these
43. deleting requirements to engage on the asset management plan
44. placing the WSEs under an obligation to review levels of service for each of their water services at least once every three years and identify the major capital projects and the overall implications for maintenance, renewal and replacement programmes .

Investment Prioritisation Metholdogies

45. That the WSE Boards document their investment prioritization methodologies and publish their methodologies on an internet sire maintained by the WSE.

Employment of a Chief Executive

That the Select Committee:
46. add a clause to the Bill that sets out the statutory function of Chief Executives of the WSE and
47. that the Select Committee add a clause clearly stating that the Chief Executive is the employer of WSE staff.

Bylaws

48. That clause 214 be amended as set out on pages 45 and 46 of this submission.

Funding and Accountability

49. That the Select Committee include a provision in this Bill ensuring that WSE charges are assessed and invoiced separately from local authorities.

Linkages to Other Legislation

50. That the Committee agree that any charges levied by WSEs should be included within the ambit of the Rates Rebate Scheme and amend the Bill accordingly.

51. That the Select Committee amend the Bill by adding a requirement for the WSEs to conduct an assessment of drinking water, sewage treatment and disposal and drainage works in their area

52. That the Select Committee add a consequential amendment to recommendation 51 repealing sections 125 and 126 of the Local Government Act.

53. That the Select Committee amend section 101A, Local Government Act 2002 to require local authority financial strategies to disclose:
(a) the financial implications and drivers for meeting the existing levels of service/accommodating new requests
(b) the local authority's self set limits on rates and debt
(c) the local authorities targets for its financial securities and equity investments and its rationale for holding these assets.

54. That the Select Committee amend section 101B, Local Government Act 2002 to align the required disclosures of local authority financial strategies with those the Bill would place on WSEs (and as amended by our recommendations above

55. That the Select Committee recommend the repeal of the requirement that the Secretary for Local Government set mandatory performance measures under section 261B, Local Government Act.

56. That the Select Committee note that many LTP requirements have flow on impacts to the annual plan and annual report requirements and will need to be address now, or in the second Water Services Entities Bill.

57. That the Select Committee seek assurance from officials that the interface between the WSEs and the following legislation will be addressed in

development of the second Water Services Entities Bill: the Public Works Act 1981; the Resource Management Act 1991 and successor legislation; the Land Drainage Act; the Kainga Ora – Homes and Communities Act 2019 and the Infrastructure Funding and Financing Act 2020.

PART ONE: THE WATER SERVICES ENTITIES BILL – AN OVERVIEW

What is Taituarā?

Taituarā — Local Government Professionals Aotearoa thanks the Finance and Expenditure Committee (the Select Committee) for the opportunity to respond to the Water Services Entities Bill (the Bill).

Taituarā — Local Government Professionals Aotearoa (formerly the NZ Society of Local Government Managers) is an incorporated society of almost 1000 members drawn from local government Chief Executives, senior managers, and council staff with significant policy or operational responsibilities. We are an apolitical organisation. Our contribution lies in our wealth of knowledge of the local government sector and of the technical, practical, and managerial implications of legislation.

Our vision is:

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

Our primary role is to help local authorities perform their roles and responsibilities as effectively and efficiently as possible. We have an interest in all aspects of the management of local authorities from the provision of advice to elected members, to the planning and delivery of services, to the less glamorous but equally important supporting activities such as election management and the collection of rates.

We offer the perspectives of a critical adviser.

Taituarā is a managerial organisation as opposed to a political one. Our role therefore is to advise on consequence, and to assist policymakers to design a policy for best results and for effective implementation. We participated (and continue to participate) in the Three Waters Steering Group to provide these perspectives, many of which are expanded on in this Bill. That is to say this submission takes the perspective of a 'critical friend' in the review process – supportive of the need for affordable, sustainable three waters services

The remainder of our submission is in three parts. The remainder of this Part provides some general perspectives on the Bill including some commentary on the overall package, what's left to do, and some commentary on the degree to which the Bill has achieved the objectives the Government set for the reforms.

Part B contains our detailed comments on this Bill. We approach this theme by theme, or area by area rather than attempting a clause-by-clause analysis. The bulk focus on the governance and accountability arrangements. Part C traverses the linkages between this legislation and other system legislation. We proffer these thoughts to provide the

Committee with a list of the flow on impact of this legislation on other local authority responsibilities and duties.

Effective water services are fundamental to the wellbeing of local communities and the nation generally.

Water services, like other network infrastructure, is the servant of the community. It is provided to generate and support a wide variety of wellbeing objectives and outcomes. While most will generally associate drinking water, wastewater and stormwater with public health and environmental outcomes, water services also support:

- housing and urban development outcomes e.g. access to a water supply is a condition of a consent and building around trunk infrastructure sets
- climate change mitigation and adaptation outcomes
- economic growth and transformation – some businesses and industries are dependent on access to a water supply. Primary industry and related manufacturing (such as food processing) are reliant on access to potable water

Local authorities have long been charged with the responsibility of delivering water services. Local government in this country essentially started life as a series of entities delivering roads and footpaths with an associated stormwater disposal component. Around the turn of the 20th century public health interests came to fore and the role expanded into the delivery of water and wastewater services. The Health Act 1956 further strengthened legal requirements. Today's three water services represent more than a century's worth of investment by and on behalf of local authorities.

Clause 11 sets out the objectives of a WSE which are broadly in line with the wellbeing outcomes that New Zealanders expect from their water services. However, clause 11 as currently drafted, muddles the objectives that a WSE is expected to achieve with some aspects of **how** we might expect them to behave in doing so.

Specifically, clause 11(d) requires that the entities operate in accordance with commercial and best practices. While we agree that the WSEs should be operating in this way, this paragraph duplicates the first (would a WSE entity that is operating with commercial/business practice be systematically acting in an inefficient way). Efficiency is also replicated in clause 12 – the functions of WSEs. Surprisingly efficiency and operating in accordance with business practice don't feature in the operating principles set out in clause 13.

Clause 11(e) requires the WSEs to act in the best interests of current and future consumers and communities. Once more we accept that 'as read' but note that once again, this is muddling the what WSEs do with the how we expect them to do it.

The authors of the Local Government Act faced a similar issue and chose to overcome this with a separate 'what' and 'how' provisions. In the WSE context this might be done by moving 11(d) and 11(e) to a separate clause that might read, for example:
"In meeting the objectives set out in (clause number) each water entity shall
(a) operate in accord with best commercial and business practice and

(b) act in the best interests of present and future consumers."

Recommendation

2. That the Select Committee separate clause into a clear statement of purpose and a statement of how the entities should give effect to that purpose.

This Bill represents the less complex half of the overall water reform package. There is a great deal more to do.

This is a relatively straightforward, though very contentious piece of legislation. This Bill essentially:

- creates the water services entities and their high-level powers and duties
- sets up the framework through which the entities will be governed and be hold accountable by their customers and communities
- gives effect to the Treaty partnership in a three waters context and
- sets out the general principles for the transition of assets, liabilities, revenues, and staff s well as processes for addressing the rest.

While these are important matters, the lessons from the Auckland reforms tell us end users of three waters services are likely to reserve judgement on the success (or otherwise) of the reforms until the first week that the entities are operating. That is to say that for the end users the true test of the reforms will lay in the quality of the services they receive, the entities response to issues at local level, what they pay for water services, and (of course) the other ways in which the entity impacts on their daily lives.

This Bill speaks to those issues only at a very broad level. The real 'bread and butter' issues are still undergoing further policy development. These include:

- the links between these reforms and land use planning and sustainable urban form – in other words how do these reforms align with the RMA reforms and support the rights of communities to determine what happens in their local places. To take an example, is a developer going to need to interact with another agent as part of the development process
- the operational powers of the entities. For example, when and under what conditions might a WSE legitimately enter private property or suspend services
- economic regulation – what controls will be placed on how and what the entities can charge for their services.[1] This is particularly important as the long-term affordability of water services has been cited as the driver for the reforms, and initially at least, it seems very likely that the bulk of WSE revenues will be collected by local authorities via the rating system
- consumer protection regulation – for example what happens with unresolved or unsatisfactorily resolved customer services complaints and

[1] The Committee might be interested to know that current proposals would extend the economic regualtion of water services to stormwater treatement and disposal. We are advised that no other jurisdiction has economic regulation for stormwater treatment and disposal.

- linkages between water reform and other legislation – for example, should local authorities be required to undertake the so-called assessments of water and sanitary services, should charges for water services fall within the Rates Rebate Scheme (they currently wouldn't).

That is to say, Parliament has been asked to start the reform process without full knowledge of how these reforms will actually impact customers and communities on a day to day basis. As we understand it, the Government intends to present the second Water Services Entities Bill to Parliament around the end of September. There will be some time for the Select Committee to consider the above as it prepares the report on this Bill, but for example, it may not have had the benefit of submissions on the second bill.

The Select Committee should consider how it provides itself with assurance that the consumer-facing issues are being satisfactorily resolved. For example, that might occur by seeking an extension to the report back date for this Bill to allow the Committee to receive, read and perhaps hear some key submissions on the second bill. We have flagged some of our concerns in Part C of this submission, the Committee might seek advice as it hears submissions on the current bill and so on.

Recommendation

2. **That the Select Committee consider how it will assure itself that customer-facing issues and matters regarding the links to land use planning will be satisfactorily resolved before it reports on this Bill.**

Will the objectives of reform be realised?

The Government set itself four bottom lines as it developed the proposals in this Bill. We refer to them using the following shorthand terms: balance sheet separation, the promotion of the Treaty partnership and Māori concerns, public ownership and good governance. The following is our assessment of the Bill against each.

Balance sheet separation is achieved, but at the expense of complexity and some loss of community voice.

Separation from the balance sheets of local authorities is one of the Government's bottom lines. The WSEs will be borrowing at levels that are significantly higher than local authorities presently do to finance the capital expenditures necessary to meet regulatory expectations. Giving the entities the balance sheet strength and the revneue capacity to be able to service that level of debt is the sole (or at least the main) driver of the aggregation of services into four entities.

The Department has released a letter from the Rating Agency S&P Global that reports the agency's conclusions on the degree of separation between the entities and the balance

sheets of their local authority 'owners'.[2] The letter is an interesting and useful read for two reasons. First,there is an implicit conclusion that separation from council balance sheet's has been achieved. The second conclusion, and bulk of the letter concludes that the removal of waters undertakings would not materially impact the ratings for Auckland Council and Wellington City Council.

The Committee, and Parliament generally, should be aware that one of the agency's assumptions is that "there is an an **'extremely high**' likelihood that the New Zealand sovereign will provide timely support to WSEs if they were in financial distress" (emphasis supplied). In other words, the Committee should be asking if S&P Global has effectively put the Crown 'on the hook' for the financial management of the WSEs.[3,4]

We invite the Committee to reflect on the other findings and stated assumptions that S&P Global have made. For example, they've assumed WSE board members will be independent of councils, that the iwi/mana whenua representatives are independent of council, that the appointment committee 'isn't dominated by any one council' etc. S&P's commentary also appears to have gone some way to defining what is considered a strategic as opposed to an operational matter.

In short, an outsider could readily conclude that the views of the rating agencies have been accorded a weight broadly on a par with those of the local authority owners. The design of the community elements of the model have been strongly influenced by the views of the rating agencies. The findings of the so-called Working Group on Governance, Representation and Accountability (the Governance Group) has shifted the balance to one that strikes more of a balance.

The Bill provides a stronger recognition of the Treaty partnership in the three waters context. This is perhaps one of the strongest features of the Bill.

Ko te Tuarua (Article 2) of Te Tiriti guarantees Māori the right to make decisions over the resources and taonga they wish to retain. This includes, but is not limited to, decisions

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2 Retrieved from https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/%24file/Ratings-Evaluation-Service-(RES)-Letter-Three-Waters-Reform-Programme-May-2022.pdf on 20 June 2022.

3 We are advised that the Crown has committed to a stand-by credit facility for the WSEs, targeted at "extraordinary events that impact a WSE and result in a lack of liquidity. That could be, for example, a temporary dislocation in capital markets".

4 We accept that clause 15(1) establishes the WSEs as a separate legal entity from the Crown (and from local authorities). We refer you to the Local Government Act 2002. Under that Act local authorities are deemed to be bodies corporate. Yet there are provisions that not only expressly exclude the Crown from liability and requires local authorities to mention this fact in disclosure and loan documents. WSEs will have the power to borrow denominated in foreign currency. A potential parallel situation may lie in the 1990 collapse of the Development Finance Corporation where it was less than clear who was liable and the Crown took on some of its debts following pressure from overseas creditors (we recall there were similar issues with the BNZ around the same time).

affecting lands and waters. Ko te Tuatoru (Article 3) commits the Crown to ensuring the rights and obligation of a New Zealand citizen are applied equally.

There can be little room for debate that WSEs are public sector entities – public ownership is another of the Crown's bottom lines. Likewise there can be little doubt the WSEs that make significant decisions which impacts on waters, lands and other taonga on a more or less daily basis. Decisions of this nature range from decisions as significant as a decision about a sewage treatment plant, to a decision to waive a charge in whole or in part.

While no WSE signed the Treaty of Waitangi, and nor did any of the shareholding local authorities, the decisions a WSE makes can easily impact on the Crown's obligations to Māori, most notably by impacting or undermining Te Mana o te Wai. And the manner in which the WSEs apply their legislation can give rise to a breach of the Crown's obligations.

Parliament has chosen to provide for the Treaty partnership and the promotion of Māori interests in several ways in this Bill. This includes the following:

- equal membership of the regional representative groups (RRG) for each water services entity and of the Board Appointment Committee (BAC) that each of RRG will create. This provides Maori with a say in the strategic direction for the WSE but not the operations of the WSE. We understand that Māori did not seek, and have not received joint governance through the entity boards
- provision that the members of the BAC and the WSE board have knowledge of the principles of te Tiriti, and of the perspectives of perspectives of mana whenua, mātauranga, tikanga and te ao Māori and (not least)
- the ability for iwi to prepare a Te Mana o te Wai statement – a formal recording of what te Mana o te Wai means at local level. The WSEs must consider how they respond to a statement where one has been developed.

The Bill does not provide Māori with any rights of special access to water over and above other New Zealanders, or provide Māori with any right to control the access that others might have to water services. It provides mechanisms for Māori to have a say over the strategic direction of WSEs that are entirely consistent with approaches to, for example, the management of bodies of freshwater that are relatively common in Treaty settlements (and have been for the last ten years). It is therefore our position that the Bill meets the Crown's obligations under Te Tirti.

The Bill makes the removal of the WSEs from public ownership all but impossible, at least for the moment.

As worded, the Bill will achieve another of the Government's 'four bottom lines' i.e. that water services assets remain in public ownership. While theoretically possible, the privatisation of WSE held assets would require:

- 75 percent support in the Regional Representative Group i.e. neither the local authority appointed representatives nor the iwi appointed representatives could advance a proposal acting alone and
- the unanimous consent of each of the shareholding local authorities. While there are different levels of shareholding based on population, a single negative vote from any

local authority defeats any proposal to privatise. In effect every territorial authority would hold the right of veto on this decision and

- a 75 percent supermajority of voters supporting the proposal in a referendum of the WSE area. It is not often that 75 percent of the public agree on any issue, let alone one as contentious as access to water.

Those who claim these proposals are a stalking horse for privatisation are very wide off the mark.

Of course, this is based on the Bill as it stands. These requirements can be amended or removed by a one vote majority in a future Parliament. The Governance Group's recommendation that the above protections be 'entrenched' provides an additional further protection by requiring broad cross-party consensus to change.

We are unaware of any legislation that is entrenched outside of few core provisions of a constitutional nature. Entrenchment is quite rightly, something that should be limited. We submit that water services are fundamental to the maintenance of wellbeing and in some ways to the maintenance of basic public order.

As far as we are aware none of the parties represented in this Parliament currently supports the removal of these assets from public ownership. Entrenchment does not shut the door on amendments if the public view changes. Support for retention of the assets in public ownership does not, or at least need not, mean supporting the remainder of the Bill. We call on Parliament to entrench the Bill's limitations and procedural requirements on the disposal of ownership.

Recommendation

3. **That the Select Committee support entrenchment of the provisions that set out the requirements for any disposals of a WSE to proceed.**

The entities will be subject to wide range of direction from outside. Could this impact on the ability to attract appropriately skilled people to the Boards?

This overview has focussed on the Government's four bottom lines and the extent to which each has been achieved. The last 'good governance; is the one where we are less certain as to the final results.

The Bill sets up a very centralised system where the WSEs will be subject to a great deal of external influence which will constrain the decisions that WSE directors are able to make. In short:

- Taumata Arowai will be regulating drinking water quality and in the long-run taking a tougher stance on enforcement – of course, this is both something that is a given, common to all jurisdictions and something the sector supports

- central government is lifting its expectations of freshwater management, in part to give effect to Te Mana o Te Wai - which has implications for what the entities might take from or discharge into bodies of water
- the second Bill will bring water services within the ambit of economic regulation (likely to be the Commerce Commission) for the first time
- the second Bill will also strengthen the consumer protection regulation of water services by providing some degree of purpose-built regulation, as opposed to water services being part of the general consumer law (such as the Sale of Goods Act)
- this Bill provides a Government with power to prepare a Government Policy Statement for Water Services (GPS: Water) that will bind water entities (and establishes that the Crown can sanction a WSE board that fails to give effect to that statement in a persistent or significant way).

And, of course, local authorities as owners, will have a broadly similar kit of tools to influence the WSEs as they do with their own council-controlled organisations (though the means for exercising them is primarily through the regional representative)

Governance is about making choices, and to that extent we are left wondering how much governing the boards of the WSEs will do in practice when so many important decisions will be made elsewhere.

To be clear, we are not criticising individual settings, per se. Indeed we are conscious that the sector asked for a greater level of community voice in the model. It is entirely proper that there be centralised health and economic regulation. But that does not take away from the cumulative effect, and it is that which concerns us.

As part of its assessment of the Bill we invite the Select Committee to seek an independent view from an expert in regulatory economics and/or institutional economics on the cumulative impacts of the above. In our view the places that such an expert would probably look for simplification or streamlining lie are:

- the degree of bind associated with the GPS: Water (or even whether this is needed at all) and
- whether a purpose-built consumer protection regulator is needed (with the existing consumer provisions in the Bill, Taumata Arowai has some ability to regulate and to investigate complaints, and of course, the general consumer protection law).

Recommendation

4. **That the Select Committee commission an independent analysis of the cumulative impacts of the Bill from an expert in regulatory economics or institutional economics as part of its scrutiny of the Bill.**

Question for Discussion

Are there any other matters of a general nature that Taituarā should raise in Part One of its submission? If so, what are they?

Part Two: Comments on Specific Provisions

'Ownership'

Taituarā supports the Governments 'public ownership' bottom line and the protections that the Bill puts in place to protect public ownership (subject to the comment that Parliament should entrench these).

We are less convinced of the shareholding model. The Governance Group suggested that a shareholding model would
" ... mean there is a tangible relationship between communities and their WSE that is well understood by the public (as compared to a legislated collective ownership). This will provide a connection to the WSE and additional rights that are recognised and have value for communities and territorial authorities."[5]

We agree that there would be benefits in the public clearly understanding the relationship between the owner local authorities and the WSE.

But the model outlined above is not a shareholding in any conventional sense of the word. Shareholding does not entitle the owner to any share in the revenues or assets of the WSEs (and the WSEs are expressly prohibited from distributing any surplus even if they had).

RRG decision-making is by consensus, with a requirement that a 75 percent supermajority be reached as a back-up in the event that a consensus is not acheived.

Shareholding does not entitle the shareholder to any vote in any annual general meeting of the owners – indeed we couldn't find any provision in the Bill requiring that the owners meet or even empowering one. It appears the RRG replaces an annual general meeting of owners (though nothing precludes the owners from meeting as a group).

The one entitlement that does come to a shareholding local authority owner is the right of veto in any decision to privatise. Yet that is a decision that must be unanimous. Effectively Mackenzie and Kaikoura's single vote each have as much weight as Dunedin's three votes or Christchurch City's eight.

We are not convinced that the model as set down in clause 16 is any more understandable to the public than the notion that all local authorities in any area are joint owners. Indeed, to the extent that it is described as a shareholding model, it may mislead the public into considering that local authorities have more influence than they actually do. The WSEs are not CCOs, we consider legislation should avoid sending signals that might convince people otherwise.

[5] Working Group on Representation, Governance and Accountability (2022), *Recommendations from the working Group on Representation, Governance and Accountability*, page 27.

However, we are pragmatists, and we recognise that the arrangements in clause 16 might be one pragmatic way forward as a default provision in WSE constitutions for appointing members to RRG. That is the only real value in what appears to have been a political compromise.

Clause 16 allocates shares based on population at the last Census. There are different measures of population – the usually resident population and the census night population (i.e. all those in the area on census night regardless of whether they are visiting or make the district their home).

The usually resident population is the one most commonly used for legislative purposes. It is also less open to sudden change, for example, the presence of cruise ships 'in port'. Usually resident population is the better measure for the 'normal' demands placed on services and so is used as the basis for forecasting school rolls and the like. But the management of network infrastructure must manage for the peak demand on an infrastructure network – although imperfect the census night measure may be a better approximation of that.

Recommendation

5. **That the Select Committee amend clause 16 to clarify whether the census night population or the usually resident population counts should be used for determining local authority shareholding.**

Question for discussion:

What are the benefits and disadvantages of the shareholding model is set out in clause 16 of the Bill? Has your council expressed any views on this model of ownership or the collective model i.e. all territorial authorities are joint, several and equal owners?

The Government Policy Statement: Water Services

The Bill empowers the responsible Minister to issue a Government Policy Statement for Water Services that sets out the Government priorities for water services.

It is no mere statement of vision - it is intended to (and will) provide Government with a significant level of control over the WSEs. Clause 132 requires the WSEs ***to give effect*** to any GPS (emphasis supplied). A significant or persistent failure to give effect to the GPS is included in the definition of a problem under clause 174 meaning that the suite of options for Ministerial intervention may be triggered (e.g. Crown observer, Crown manager etc).

While perhaps not an operational control, this is several steps up on, for example the degree of control central government takes over other network providers. For example, the Minister of Transport must issue a GPS for land transport, but that document is primarily used to guide the funding priorities of Waka Kotahi etc. The relevant legislation doesn't appear to empower the Minister to set out the expected contribution that Government expects land transport would make to various other Government priorities. And the GPS land transport has a looser degree of 'bind' on others in that documents such as a regional land transport strategy need only be consistent with the GPS.[6]

The findings of the Commission into Havelock North that there had been systemic regulatory failure has been addressed by creating an independent health and environment regulator, by unifying capability through the acquisition of scale, and by establishing a new regime for economic regulation. Those are all features that are common to regulation overseas. The level of centralised control created by the GPS: Water is unusual and is perhaps one that is not strictly central to Government's stated rationale for reforms. Noting out comments about the ability to attract suitably qualified directors – this is an area the Committee might want to further consider if it wishes to simplify the model.

Support to implement the GPS

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

We submit that as it stands the Bill empowers an 'all care, no responsibility' approach to development of a GPS: Water. We submit that the Minister should be required to publicly state what support the Government intends to provide those agencies that are required to give effect to the GPS: Water to implement it. That would include funding but would not be limited to funding support alone. For example, the Government might support the

[6] The Committee might refer to the Land Transport Management Act 2003.

development of the water workforce by loosening immigration restrictions; amend other government policy statements to address areas of conflict and so on

Recommendation

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

A regulatory case

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

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

Recommendation

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

Relationship with other Government Policy Statements

We conclude this section with a drafting issue (although equally it may be an interpretation matter). Clause 132 requires WSEs to give effect to any Government Policy Statement (emphasis supplied). Other clauses (e.g. clause 174) refer more specifically to "any Government Policy Statement under (clause) 129". The Committee will doubtless be aware that there are a multiplicity of Government Policy statements. In the absence of the specificity of the reference to this one, it is open for someone to claim that the WSEs should be giving effect to others.

This is almost certainly a drafting inconsistency in that the suite of the Government Policy Statements, while important, are far from the only strategic document that might be relevant. For example, our colleagues at Local Government New Zealand have raised issues

around the integration of this GPS with the current suite of National Policy Statements issued under the Resource Management Act.

Recommendation

8. **That the Committee amend clause 134 to read "When performing its functions a water services entity must give effect to any Government policy statement issued under section 129."**

Engagement on the GPS Water Services

We consider that the engagement provisions for adoption of a GPS: Water are generally no more than of moderate strength. Water services are fundamental to the achievement of community wellbeing (which perhaps is why central Government proposes to set a GPS: Water in the first instance).

We imagine that the Committee will receive a large number of submissions from various agencies seeking to be added to the list of named agencies in clause 131(b). Taituarā does not seek such recognition, however we submit that local authroties be added to the list of named agencies.

Local authorities have, and will continue to, have responsibilities in promoting a sustainable urban form and land use (though the balance of decision-making responsibilities and the instruments that record these decisions may change).[7] Local authorities retain roles as the makers of place that is so critical to our competitiveness. And (not least) a local authority provides the means for democratic local decision-making and action and, on behalf of communities, will have views on water services and each of the matters listed in clause 130(3)(a).

Providing local authorities with an explicit voice in the engagement process is something practical that could be done to enhance the overall degree of community voice in the system. Not all local authorities are satisfied that the present RRG/advisory panel model provides for adequate representation of territorial authority views. Giving individual local authorities a voice in the engagement will enable the GPS: Water to be better informed with real-life examples of the real world issues that communities must negotiate at the interface of say, water, housing, and environmental outcomes. That can only make for a stronger GPS: Water.

We compare the obligations to consult and how they have been expressed, with the equivalent provisions in local government legislation. For example, the decision of most

[7] The Resource Management Act reforms may see some of these decisions move to what we'll refer to as regional planning committees (for the purposes of this submission). They too will have views on the matters listed in clause 130(3)(a). While it would be inappropriate for the Committee to incorporate a reference to entities that do not currently exist (and may never), we submit that this an issue the Committee may want to draw to Parliament's attention.

significance under the Local Government Act is the adoption of a long-term plan. That requires consultation, and has a process laid down which includes:

- the preparation of a consultation document
- a minimum period for the engagement (one month)
- an obligation to accept written feedback and provide at least one opportunity for people to interact with decision-makers.

The Committee will be aware that there is intense public interest in water services, in the reforms that have driven this bill and in the matters that the Government may choose to include in the GPS: Water. We submit that this level of interest is likely to carry through beyond this reform and legislative process to the decisions and actions that the Minister takes or sanctions in the course of preparing the GPS: Water.

That being the case, the decisions and actions that the Minister takes will be under a great deal of public scrutiny, and will be open to judicial review. The Committee may want to take advice on the utility of specifying some expectations as to the steps that the Minister should take when consulting.

Furthermore, we note that there are more specific (and higher level) obligations on the WSEs. The WSEs are under an obligation to "engage" on certain key decisions as opposed to "consult." The terms are not interchangeable. Consultation is but one form of engagement and a relatively low-level form at that. Typically, it is taken to mean the preparation of a proposal and an opportunity to provide feedback on the proposal in a relatively formal process. Engagement encompasses a full range of methods from consultation, through co-design options through to devolving decisions. Of course, we have little doubt that the Government intended that the Minister consult on the GPS, but we note the Bill places WSEs under a higher obligation.

Regardless, clause 202 does provide a steer for the WSEs in that it is expected to provide and seek feedback on a proposal. Additionally, clause 202 provides the WSE with a list of things to consider in determining an approach to engagement on any particular issue. These are all things that we would support as they appear to substantially align a similar provision in section 82 of the Local Government.

In short, there is considerable merit in the Bill placing the Minister under similar obligations when engaging on the GPS, as are placed on the WSEs when giving effect to it.

Recommendations

That the Select Committee:

9. **amend clause 131(b) by replacing the word 'consult' with the words 'engage in a way that gives effect to the requirements of clause 202'**
10. **amend clause 131(b) by adding local authorities to the list of named parties for engagement**

Te Mana o te Wai

The strengthening of the regulatory system for the three waters and these reforms are both intended to protect and enhance Te Mana o te Wai (either directly or by creating institutions with the financial capacity). In addition to the partnership aspects to the governance arrangements, the Act empowers mana whenua to prepare a Te Mana o te Wai statement and requires the WSEs to state what actions they intend to take to give effect to that statement.

We support these requirements in principle, noting that the obligation on the WSE is to receive the statement, engage with Manu Whenua, and provide a plan for how it will give effect to the statement. It is therefore possible that there could be conflicts between a Te Mana o te Wai statement and (for example) the direction in a GPS: Water.

The Bill provides no obvious hierarchy or process for resolving conflicts here, or indeed between any of the other responsibilities, powers, duties, obligations in the Bill. At a minimum there should be some expectation on the WSEs to ensure that conflicts are resolved in an open, transparent and accountable manner. That could be included either as one of the operating principles of clause 13 or as part of the 'how WSEs give effect to the objectives clause' (see recommendation six).

We noted that clause 74 requires boards to maintain systems and processes for ensuring that they develop and maintain skills and knowledge in Te Tiriti and to give effect to Te Mana o te Wai. In reality, those skills are being called on across other reform programmes for example:

- in the development of regional spatial strategies in the proposed Strategic Planning Act
- in the proposed Natural and Built Environments Act and
- to an extent in last year's reforms to the rating of Whenua Maori.

This is an area where central government (through the National Transition Unit) can provide a greater level of support to the WSEs and their boards, by working with Maori to devleop a resoruces and professional development. This will be needed from day one and might, for example, form part of the Industry Transformation Strategy that the Transition Unit is developing.

But equally we recognise that there are increasing demands on iwi/mana whenua to contribute both as a partner in co-governance processes (and not just in three waters) and through engagement processes that are growing in their frequency and their complexity There should be some degre e of two-way or reciprocity, for example by the WSE taking steps to assist iwi/mana whenua to build their caoacity to contribute to the WSE engagement and governance processes.

Section 81 of the Local Government Act requires local authority to *"consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority"* and to report on the steps it actually took in accountability documents. Local authorities take steps such as formal or informal professional development, resources in Te Reo, secondments of staff from iwi authorities into local authorities (or staff exchanges

between the two) and financial support to enable Māori to purchase specialist advice. The WSEs will be extremely large entities with a local presence. There is the potential for WSEs to be taking the same steps.

Recommendations

11. **That the Select Committee provide guidance that WSEs are expected to manage conflicts in an open, transparent and accountable manner either as one of the operating principles of clause 13 or in 'giving effect to the objectives clause' as per recommendation 6 above.**

12. **That the Select Committee place WSEs under an obligation to consider ways in which they can help foster the development of Māori capacity to contribute to the governance and decision-making processes of the WSE.**

The Regional Representative Group and Panels

In its report the Governance Group stated that
"As described in the model originally proposed by the Government (July 2021), the role of the RRG was seen as unclear and lacking in a genuine ability to provide input from iwi and councils from the regions they represent. As the RRG is the co-governance body made up of representatives from councils and iwi/hapū, the Working Group considers this body as having a primary role in driving strategic direction that encompassed all of the various priorities and local voice within the WSE region, including Te Mana o te Wai, catchment priorities, headline matters from local council strategic plans, and future development strategies. Its role was also to appoint/remove Board members and monitor the performance of the Board and the WSE."[8]

We agree. The role of the RRG has been both clarified and strengthened from the original model as a result of the Governance Group, and the Government's response to it. For example:

- the board appointment committee no longer sits at arm's length from the RRG, and
- the approval process for documents such as the funding and pricing plan and the infrastructure strategy have been strengthened, and
- regional advisory panels been established.

We have one concern about the representativeness of the RRG. The Governance Group's report recommended that
"The Bill require that Council representatives should have a mix of representatives from urban, provincial, and rural councils."[9] (recommendation 20).

We agree, and note that the Government agreed that Bill would ensure that the WSE constitutions would contain provisions allowing the shareholding local authorities to define this. We can find nothing in either clause 32 (appointment of territorial authorities) or clause 91 (contents of the WSE constitutions that appears to explicitly require that the RRGs have a mix of representatives.

In our view, local authority confidence in the model would be enhanced by an RRG that has real and perceived representativeness of the local authorities this may go some way to overcoming concern that most local authorities will 'miss out being represented by their people'. This should be stated as a 'bottom line' in the clause that provides for the appointment of territorial authority representatives to RRGs.

But we also agree with the Governance Group's finding that the constitutions should allow for flexibility in how these requirements are met in practice. This could that a simple addition to clause 91(a)(ii) requiring the procedures for appointment of territorial authority representatives give effect to any requirement that the RRGs broadly reflect the range of different types of territorial authorities.

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[8] Working Group on Representation, Governance and Accountability (2022), *Recommendations from the working Group on Representation, Governance and Accountability*, page 11.

[9] Working Group on Representation, Governance and Accountability (2022), *Recommendations from the working Group on Representation, Governance and Accountability*, page 33.

Turning to another matter, we suggest there should be a mechanism for the shareholding local authorities to meet as a collective to discuss matters that relate to the WSE and are of joint interest. An annual 'shareholders' meeting might provide a venue to for example, to undertake the appointment of the local authority members to RRG and for RRG to get feedback on its performance. It could be used to supplement or replace the regional advisory panels (RAPs) as a means of providing community voice. Assuming the Select Committee agrees with that model, then we consider this would be best given effect as an option that could be taken up and given effect to in the WSE constitutions.

Recommendations

That the Select Committee:

13. **add a requirement that the territorial representatives to RRGs be broadly representative of the different mix of metropolitan, provincial and rural territorial authorities to clause 32**
14. **add a requirement that appointment procedures for the territorial authority representatives for RRGs give effect to the requirements that RRG membership be broadly representative of the different mix of territorial authorities**
15. **empower WSEs to allow for the calling of a annual shareholders' meeting by amending clause 91.**

Non-voting Membership Questions

The Governance Group's recommendation 42 was that the Bill include provision for a non-voting Crown representative to an RRG. The Government response suggested the legislation would not prevent an RRG from inviting a non-voting representative, and further that a Minister might appoint a Crown observer where a 'problem' exists.[10] We agree that there is nothing that would obviously preclude this, but nor is there anything obvious that would empower it.

We submit that the degree of 'bind' in the GPS: Water makes the addition of someone who can explain the Minister's intent would be a useful addition to the RRG. Especially given that failing to give effect to the GPS: Water in a significant way might give rise to a 'problem' which would trigger the intervention framework.

In a similar vein an RRG may find it useful to appoint one or more non-voting regional council observers to the RRG or perhaps to the regional advisory panels. Regional councils have a critical role as environmental regulators that cannot help but impact in a significant way on the achievement of WSE objectives.

[10] In this context, we consider the observer power to be red herring. The purpose of an observer as currently provided for is to fix an issue. As we understand it, the Governance Group's recommendation was to provide a means for avoiding them!

Again our intent is to empower both types of appointment rather than require it. This could be done by adding an empowering statement into clause 91 i.e. we consider this to be a constitutional matter.

In a similar vein, some Crown entities have provision for alternates in the event that a board member is unable to attend a meeting. The RRG is an entity providing perspectives on issues that will shape local communities for years to come – being unable to contribute these because someone is ill, overseas etc does not seem in keeping with the nature of the role. Again, the legislation doesn't preclude the appointment of alternates, but nor does the legislation empower it. Any appointment of alternates would be subject to the same processes and statutory criteria as the appointment of full members,

Recommendation

That the Select Committee:

16. **empower regional representative groups to, at their discretion, invite the Crown to appoint a non-voting observer to attend all group meetings**
17. **empower regional representative groups to, at their discretion, appoint a non-voting observer or observers from a regional council in entity's service area**
18. **empower regional representative groups to, at their discretion, appoint alternates to perform the roles of members of the group when they are absent.**

Question for discussion

Would you support empowering WSEs to allow for the appointment of non-voting observers from central government and/or regional councils to an RRG? Why or why not?

The Regional Advisory Panels

During the first reading debate several members commented about the representativeness of a model where up to 22 local authorities would be selecting no more than seven representatives on the RRG. We agree with these concerns and therefore commend the Governance Group for its wise recommendation that the RRGS be empowered to establish RAPs.

The RAPs will be central in gaining public confidence and trust in the overall model, as the RAPs will be a conduit between the RRG, the shareholding local authorities and their communities. It is this mechanism that will provide the means for communicating local views and concerns – some of which may relate to those matters that we referred to Part One as

the customer facing issues, but which can have a high level of local significance (for example, Bromley's odour issue).

While the legislation is quite empowering as to what matters the RRG could seek advice from any RAPs they have established we consider that there are certain matters that are so fundamental that the RRG would have to seek advice. Those matters will largely relate to the various components of the accountability framework In others the RRG must seek RAP advice as it;

- develops the Statement of Strategic and Performance Expectations
- comments on the funding and pricing plan and on the infrastructure strategy "(we are less convinced about the need to seek advice on the asset management plan as local authorities will be commenting on that directly)
- develops the appointment and remuneration policy.

Clause 46 is clear that the RAPs are advisory panels and not decision-making bodies. That is to say this model isn't setting up a multi-layered decision-making arrangement or even joint/shared decision-making. To take one example, it seems fairly clear (and sensible, in the context of the Government bottom lines) that there is no obvious powers to RRG to delegate a decision to an RAP.[11] That's important because such an arrangement keeps transactions costs at their minimum.

RAPs are intended to provide for a greater degree of representation and to play an advisory role. Of necessity that includes acting as an advocate for the needs and preferences of local communities. Balancing the competing interests of mutiple RAPs with the views of manu whenua and making decisions is the task of the RRG.

As a purely advisory body we were surprised to read in clause 47 that the RAP members must exercise their roles wholly or mostly for the benefit of all communities in the WSE's service area. That is to greatly diminish what we had understood to be the central role of an RAP – that it be there to advocate and advise for local communities. In a local govenrment context, local and community boards are not only empowered to, but are expected to advocate for their local area. By all means, the RAP should regard to the needs of the entire service area, but as it stands it seems that the Bill is creating a group for a representative purpose, and with its ability to represent hobbled.

Taituarā expects that the RRGs and the local authorities they represent will want to set up RAPs – possibly more rather than fewer initially. There is a wide degree of flexibility afforded the WSEs and the RRG in the existence of RAPs and the number of RAPs, their boundaries , to some extent their duties and support structures (such as committees). That is as it should be – trying to provide for every circumstance adds a level of prescription to the legislation that would have been less than helpful in the long run.

However, we do not think that this discretion should be completely unfettered. That the development of the first constitutions is being left to regulation is one check. The Minister

[11] Decision-making at RAP level may lead to the blurring of strategic and operational, and the neaer decision-making gets to local authority the greater the potential to imperil balance sheer separation.

needing to approve any subsequent changes is another. But those developing RAP arrangements, be it the Minister or RRGs subsequent should be given criteria to exercise when making these decisions. Broadly speaking these might be

a. the purpose of the WSEs
b. the purpose of the RRGs and the degree to which the proposed arrangements support these
c. the effective representation of the needs of local communities to the RRG
d. the efficiency, including the cost efficiency, of the proposed arrangements..

If these seem familiar, they should, they are (loosely) based on the test of good local government that historically applied to proposals to reorganise local government and the tests that are currently applied.

RAPs are important to the success of these reforms. As we've said the likely initial case will be that there are more rather than fewer RAPs established and that they'll cover the entire WSE area. Local demography, local economies, local needs and priorities are forever changing – its one of the reasons we have local government.

There should some mechanism where the RRG and the shareholding local authorities periodically review the RAP boundaries, duties and other matters relating to RAPs. A first review might be undertaken no later than the review of governance and accountability envisaged under clause 195. We submit that there should be a review at least once per term thereafter – with discretion not to undertake a review if the RRG deems there to be no need.

Recommendations

That the Select Committee:

19. **place the RRGs under an obligation to seek advice from regional panels when developing a Statement of Strategic and Performance Expectations, when commenting on an infrastructure strategy, when commenting on a funding and pricing plan, and when approving a board appointment and remuneration policy**
20. **amend the collective duty of a regional advisory panel to advocate for the interests of its local area, having had regard to both the interests of the local area and wider WSE service area**
21. **provide those designing or determining regional advisory panel arrangements be with a set of statutory criteria to have regard to**
22. **add provision requiring the RRGs to regularly review their regional advisory panels (including provision for an initial review before the wider review of governance and accountability in clause 195).**

Vacancies on the RRG (and Board)

The local authority members of RRG may only drawn from amongst the ranks of sitting elected members, currently serving chief executives and senior managers from within the WSE's service area. The role is to provide the perspectives of the local authority owners on the range of matters in clause 28.

Given the narrow manner in which the clause 27 is drawn we consider it unlikely that the policymakers intended that a person who has ceased to be an elected member of a local authority, or an employee would complete the remainder of their term. That is further given support by the fact that board members cease office if they become disqualified under clause 97.

The Committee may want to take advice on the Government's policy intent. If the intent was that a person would hold office as an RRG member only while they meet the requirements of clause 27, then a procedure will be needed for circumstances where an elected member is defeated in a triennial election. There are procedures in the Local Government Act that require a Chief Executive to declare an elected office on receipt of a resignation or other evidence that the member is no longer eligible to hold office.[12] There is no discretion – once aware the Chief Executive must declare a vacancy. That must also be accompanied by an obligation of RRG and board members to advise the Chief Executive as soon as reasonably practicable after becoming aware they are no longer eligible for membership.

Recommendations

That the Select Committee

23. **add a clause clarifying that RRG members hold office only while they satisfy the requirements of clause 27(3)**
24. **clarify that RRG and board members must notify the WSE Chief Executive as soon as practicable after ceasing to be eligible to hold office as an RRG or board member as the case may be.**

Skills on the Appointment Committee (and Board)

Achievement of the Government's 'good governance' bottom line will be critically dependent on getting the right skills into the right roles.

Clause 38 sets out a requirement that the appointees to the BAC collectively possess skills and knowledge in performance management and governance, network infrastructure industries, te Tiriti principles and perspectives of mana whenua, mātauranga, tikanga and te ao Māori. Clause 57(2) has an identical provision covering appointments WSE boards.

[12] Clause 5, Schedule 7, Local Government Act 2002 and section 117 of the Local Electoral Act 2002.

We generally support the specified requirements. During the policy process leading to this Bill we did query whether the need for skills and knowledge of network infrastructure industries needed more specificity. On a plain English read a BAC/board would meet this test by having members with skills or knowledge in areas such roads and footpaths, telecommunications, energy, and at a stretch, passenger transport (as well as the three waters themselves).

While we would agree there are aspects of infrastructure management that are common to all of these (network economics, the fundamentals of asset management and the like). But there is also a very strong public health element to the provision of water services that is fundamental to the understanding of a three waters business. The linkages between three waters and Te Mana o Te Wai is also a very important aspect that may not be apparent in other industries. We suggest that likelihood of a successful reform process is maximised if the boards have some pre-existing knowledge of the services they are charged with delivering.

Policy-makers have (quite correctly) noted that the reforms must deliver customer-centric service from the very start. We see this in the consumer panel, in the customer engagement panel and in the attention being given to consumer protection (the latter for the second Bill). We agree with this, and were therefore quite surprised that the Bill does not require that neither the BAC nor the board have any skills or knowledge of customer service or consumer engagement.

Our observation is that good engagement and the organizational culture and values that support it 'come from the top', especially in the public sector. We submit that either or both of customer service or consumer engagement must be added to the mandatory skill sets of the BAC, and particularly the Board.

Recommendations

That the Select Committee agree to:

25. amend clauses 38(2) and 57(2) by replacing the words 'network infrastructure' industries with the words 'water services industries'.

26. amend clauses 38(2) and 57(2) by adding the words 'customer service and customer engagement' to the list of skill sets.

Boards

The assumption that the Boards would be competency-based rather than representative based is one of the core tests that S&P appear to have applied in reaching its conclusions. Those few council controlled organisations that deliver water services, appoint on the basis of skills rather than representation.[13] And while practice with others varies from council to council, the days when being on a board delivering a significant service was seen as 'councillors only' has passed.

Earlier in this submission we discussed the skills sets for board members. A Board member will need to balance these skills with some of the softer skills around the ability to listen, personal empathy and so on. They will need to balance commercial discipline with a genuine valuing of local voice. This is why its important that the community voice is maintained in the strategic level decisions and interactions between the RRG entity and the WSE Board.

Board appointment policies

In addition to the above comment on skills we would like to raise one further matter around appointment policies. As currently worded, we see no obligation on the BAC to ensure that there is any ongoing training or other professional development for the Board. Good governance practice, outside of the fundamentals, is a constantly evolving thing. Board members should be receiving regular refreshers/update training.

In addition, we would expect that any BAC worth its salt would want to ensure that it appointed and built depth in the necessary skills so that, for example, all directors had a sound working knowledge of the principles of te Tiriti and how they apply to a WSE. We'd also expect a Board would regularly update its skills in financial management, law, asset management etc.

RRGs and their associated BAC would also want to ensure that their appointment and remuneration policies were regularly reviewed. We consider a prudent RRG/BAC would review the appointment and remuneration policy at least once per term – probably shortly before the end of a term (so that it takes effect from the start of the next term).

The appointment and remuneration policies are critically important to determining who is appointed to a WSE board and on what terms. Transparency in this area would boost public confidence in the board members and the boards (i.e. avoiding perceptions of 'jobs for the boys', 'buggin's turn' and the like). Local authorities publish these documents as a matter of course – though it was historically a legal requirement.

[13] Watercare has eight directors – none are sitting elected members. Wellington Water directors are appointed likeswise.

Recommendations

That the Select Committee add further provisions to clause 40 that:

27. **require that appointment and remuneration policies set out policies on the provision of training and professional development of entity board members**
28. **require that appointment and remuneration policies be reviewed at least once in the term of each RRG**
29. **require the publication of board appointment and remuneration policies on an internet site maintained by the WSE.**

Membership

One of the assumptions that S&P Global made was that WSE directors would be independent of the councils in their service area. This is the reason that clause 97(2) prohibits a sitting elected member of a territorial authority, member of an RRG or of a RAP from sitting on a WSE board.[14]

We have paid close scrutiny to this clause as it was deemed fundamental to separation, and conclude that it may not. As drafted, the clause does not preclude local authority Chief Executives and senior managers from being a member of their local WSE board. Yet a Chief Executive is bound to follow the lawful instructions of their council, and a senior manager likewise must follow the lawful instructions of their Chief Executive. Although it would be a brave Chief Executive that accepted a role on a WSE board, our view is that the legislation should rule it out.

As we read it, the legislation precludes only territorial authority members from sitting on a WSE board. Local board members are not members of a local authority (though this circumstance is currently limited to Auckland alone), and similar applies to a community board members'. We propose that the exclusion provision be extended to cover members of these bodies.

Most interestingly of all, regional council members (elected as per section 19D of the Local Electoral Act) appear expressly included. There are regional councils that own some water services (Wellington Regional Council mostly) and of course regional councils have strong regulatory interests through, for example, the National Policy Statement on Freshwater. While in most instances there is no balance sheet separation argument there is a conflict of role argument to be made for excluding them from Boards (and noting they are precluded from RRG membership).

[14] The Committee should note that the Bill precludes those who meet these tests from being a member of the board of <u>any</u> WSE not just their 'local' WSE. We understand why the Bill might maintain this degree of separation – but would separation be imperilled if say an Auckland Councillor who had (say) been a director of Auckland Transport was a member of entity B's board?

Recommendations

The Select Committee:

30. **amend the Bill to preclude regional council members, local and community board members from membership of a WSE board**
31. **amend the Bill to preclude a local authority Chief Executive or an employee of a local authority from membership of a WSE board.**

Meetings

We were interested to see the Bill specified a minimum number of public meetings that the WSE board must hold.

The legislation should not be doing anything other than encouraging the WSEs to hold those meetings that are *'that are necessary for the good governance of the entity'* (borrowing from clause 19, schedule seven of the Local Government Act 2002). That is not prescriptive as to when, where, how many or prescribing an agenda and leaves it to entity constitutions. Any competent board would know it needs to meet to adopt a statement of intent (and the suite of plans described).

The Boards are public sector entities, with significant influence over land use and urban form outcomes, providing an essential service and with what is not far off a power to tax (especially in the initial years when collection via the rating system is a strong possibility). The default setting should be that a WSE meeting should be open to the public unless there is sufficient lawful reason to exclude the public. This the case with three waters issues as they arise in a local authority.

Clause 61 establishes that the WSEs are subject to the Local Government Official Information and Meetings Act 1987. These provide for a series of reasons for excluding the public from meetings – essentially those that are grounds for withholding requests for information. We see no reason why the WSE Board would be exempt from those provisions.

Recommendations

That the Select Committee:

32. **replace the minimum number of public meetings that WSEs must hold with a requirement that the WSE hold such meetings as are necessary for the good governance of the entity and**
33. **require that all meetings of the WSE be held in public except where provided for by section 47 of the Local Government Official Information and Meetings Act 1987.**

Planning Documents

We turn to a cluster of requirements that together make up the WSE equivalent of the long-term plans that local authorities have to prepare and a significant component of the information that underpins these documents. We will use the collective term 'planning documents' to refer to the combination of the asset management plan (clauses 147-149), the funding and pricing plan (clauses 150 to 152) and the infrastructure strategy (clauses 153 to 155).

Funding and Pricing Plan

The Funding and Pricing Plan (FPP) sets the entities overall revenue requirements and set out the WSE's proposed set of funding sources. We support these provisions as they stand but raise the following points as matters of amplification.

Water services are essential to the maintenance of life. Access to water and sanitation is, rightly, regarded as a human right. We were therefore surprised that, even in this first bill, the FPP contains no obligation on the WSEs to consider the affordability of their services to the end user. It is not enough to leave this to an economic regulator.

Our first point replicates one that we've made about the equivalent requirements in the Local Government Act. WSEs will almost certainly engage on their FFP in conjunction with their infrastructure strategy, and between engagements are likely to be read by users together. It seems unhelpful and confusing to a ratepayer to have an FPP with a minimum shelf life of 10 years, when the infrastructure strategy with a minimum life of 10. It can also incentivize deferring key decisions with significant financial impacts into year 11.

The FPP must include a financial strategy. This is modelled on the requirement placed on local authorities, but may not adequately account for the differences between WSE's operating environment and that of a local authority.

The purpose of a financial strategy in local government was to provide local authorities and their communities with a tool for identifying the financial impacts of proposals and prioritizing. The strategy does this by requiring local authorities to set a overall financial direction (i.e. what's the financial position the local authority expects in at the end of the strategy) and requires the local authority to set 'soft' limits on rates and debt.

There is no such requirement on a WSE – that is to say that the top down strategic element would be missing from a WSE's financial strategy. It may well be that policy-makers considered that the economic regulator might well place controls on revenue that provide such a limit and render this requirement moot.

We submit that is to misunderstand the purpose of the limits. These help communicate realities to the public, and help priortise competing requests for levels of service changes. We add that if properly set a limit on revenue and on debt support the regulatory regime in encouraging WSEs to seek efficiencies.

The pricing plan is meant to tell the readers a story of the key financial issues, decisions and what they can expect to pay, how and when. Clause 151(2)(a) largely replicates the disclosures local authorities must include under the Local Government Act. We suggest that this could be simplified by deleting items (a)(i) to a(iii) and leaving the disclosure at the 'factors that are expected to have a significant financial impact on the entity as' as currently set out in the remainder of 151(2)(a).

Clause 1512) requires the WSE to set out its policies on giving of security for borrowing in it financial strategy. But WSEs are prohibited from using water assets as security for borrowing, leaving them with only one option – to secure debts against the future revenue streams. That seems more like a disclosure that might be incorporated as part of the disclosure required under clause 152(1)(a).

Similarly, the WSE is required to disclose objectives and quantified targets for any holdings of financial investments and equity securities. We cannot readily conceive of any circumstance where a WSE would take an equity shareholding in any entity (for example, by creating a subsidiary). The WSE would create, add to, subtract from and dispose of financial reserves as part of the normal management of its business. It would be reasonable to expect that the WSE would have targets and disclose that in s financial strategy

And last, the FPP should be made available to whatever agency is responsible for the economic regulation of water services. We understand that thisis likely to be the Commerce Commission.

Recommendations

That the Select Committee:

34. **amend clause 150(2)(a) to set a legislative timeframe of 30 years for the FPP**
35. **amend clause 151 to add a requirement that the WSE boards consider affordability for individuals and groups of individuals in developing their funding and pricing plans and document the results of that consideration**
36. **add a requirement on the WSEs to set limits on their revenues and borrowing as part of their financial strategy**
37. **delete clause 151(2)(b) as redundant**
38. **amend clause 151(2)(c) by deleting redundant references to equity securities**
39. **require each WSE to supply the Commerce Commission with a copy of the funding and pricing plan.**

Infrastructure Strategy

The infrastructure strategy is the counterpoint to the FPP. This is a much clearer requirement than the financial strategy, and indeed is more clearly expressed than the equivalent in the Local Government Act.

The one point we would make here is that the equivalent provisions of the Local Government Act require the disclosure of assumptions around the life cycle of significant assets, growth and demand for the relevant assets, and assumptions about levels of service. This is useful contextual information that can be used to illustrate or clarify the key issues that are disclosed elsewhere in the industry. For example, that these changes to the drinking water standards represent an enhanced level of safety over the current levels. The assumptions are also central to the reader forming a judgement about the robustness of the plan.

Local authority long-term plans are subject to a prospective audit that provides an attest to the quality of the assumptions and other information used to develop the plan. We do not see a need for WSEs to undergo a full-blown audit in the same manner as long-term plans are.

However, the WSEs should be required to publish the methodologies used to assess asset condition and the levels of demand for services, and periodically cause an independent assessment of these methodologies. Local authorities would typically check and calibrate their growth assumptions 18-24 months from the adoption of a long-term plan, and their asset condition information no more than 18 months from adoption of a long-term plan. That may or may not involve a full review of the methodology.

Recommendations

40. That the Committee add a further clause after clause 154(2) that requires disclosure of the WSE's assumptions regarding
(i) the condition and useful lives of significant assets
(ii) the levels of growth and demand for water services and
(iii) changes to levels of service.

41. That each WSE be required to publish the methodologies it uses to establish asset condition and estimate the level of growth and demand for water services.

Asset Management Plans

The third of the troika of plans required is a requirement to produce an asset management plan (AMP) and engage with the public in the preparation. This is an obligation that is actually over and above the equivalent that is currently required of local authorities.[15]

We agree that it is essential that the WSEs continue to undertake asset management planning.

[15] While local authorities required to undertake asset management planning (that is, a process) they are not required to produce an asset management plan by law. The requirement on local authorities is driven more by the requirmeents of the long-term plan audit, in practice a local authority that did not AMPs for water services would teceive a negative audit report.

Our reservation lies not with the requirement to plan, but with the requirements to engage in preparing those plans. We invite the Committee to review the AMPs presently prepared by local authorities. They are very detailed documents that can easily run to hundreds of pages – especially in those local authorities that have multiple water, sewage treatment and disposal schemes.

Now multiply that by more than twenty and you have some estimate of the likely size and complexity of the AMPs. We submit that these are not suitable as the focus for an engagement with the public, and that they were never intended to be.

Consumers are unlikely to want a say on the detailed programmes of maintenance and renewals that make up the business as usual for an AMP. They are far more likely to have a view on the levels of service they receive, whether there's any intention to increase or decrease these, and what the implications of those are for maintenance, replacement and renewal programmes.

Rather the requirements to engage on the asset management plans themselves, the Bill could be reframed to require the WSEs to periodically engage on their levels of service. These so-called levels of service reviews are common practice in local authorities, and while they can be (and often are) undertaken in conjunction with long-term plan engagement, they are equally often undertaken separately.

As with other engagement required under the Bill, the WSEs could be required to develop a proposal and seek views on that proposal. While legislation need not specify further content as a practical matter the proposal would need to set out

a. the current levels of service and the performance measures used to assess whether these have been achieved
b. the proposed changes to levels of service – including an indication of when the change will occur and the reasons for the change
c. the major capital projects necessary to support the change and an estimate of the likely order of cost
d. the expected expenditures on renewals, replacements and maintenance necessary to support the levels of service when these have been achieved.

Recommendations

That the Select Committee amend the Bill by:

42. requiring WSEs to prepare an asset management plan of at least 30 years duration for its infrastructure assets and publish these
43. deleting requirements to engage on the asset management plan
44. placing the WSEs under an obligation to review levels of service for each of their water services at least once every three years and identify the major capital projects and the overall implications for maintenance, renewal and replacement programmes .

Investment Prioritisation Methodologies

We join with the Governance Group in concurring (albeit reluctantly) that the provision of detailed comment to the WSEs on investment prioritisation would be operational direction and violate balance sheet separation. But the Boards will adopt protocols, procedures and practices for weighing the merits of competing proposals.

These might be formal practices such as variations on benefit/cost analysis techniques or multi-criterion analysis. They may be variants of a business case methodology (the Government's Better Business Case and the so-called 'BBC-lite methodology'). Whatever they are, transparency demands that these be available to the public.

Recommendation

45. That the WSE Boards document their investment prioritization methodologies and publish their methodologies on an internet sire maintained by the WSE.

Employment of a Chief Executive

The Bill establishes four new entities out of the undertakings of 67 local authorities. It is appropriate that the Bill spell out a requirement to appoint a Chief Executive for the entity and that the Bill include a good employer provision. The latter is closely modelled on the equivalent requirement on local authorities.

We were surprised that clause 119 is not clearer around the role of the Chief Executive, as is the case for Chief Executives of local authorities, government departments and the like. In particular, we are unclear as to why policymakers have not explicitly applied the separation of governance and management to design of the WSEs.

One of the government's 'bottom lines' was that the entities would be well governed. We consider the separation of the respective roles of governance and management to be a fundamental pre-condition for good governance. Not clearly separating governance and management provides the WSE board with licence to 'dabble' in the day-to-day operations of the WSE. This would seem inconsistent with any notion of the Board operating to commercial disciplines.

The usual means for creating for the separation is to make the Chief Executive the employer of all staff, with the board acting as the employer of the Chief Executive.[16] This is usually accompanied with some description of the role of a Chief Executive. Broadly speaking the role of a WSE Chief Executive would be to:

a. implement Board decisions
b. advise the Board
c. ensuring the effective and efficient management of the activities of the WSE
d. providing leadership for the WSE staff, including inculcating values of customer service[17]
e. employing staff on behalf of the WSE and negotiating their terms and conditions of employment.

And while it is unusual for legislation to specify a set of skills, competencies or knowledge for the Chief Executive of a public service entity, we return to our earlier comments reflecting the importance of customer service and customer engagement. While we do not see a need to set out a full set of skills and competencies we would expect that clause would require WSE boards to hire someone who can give effect to the role.

Recommendations

That the Select Committee:

[16] In both local government the separation is further consolidated by an absolute prohibition of any person being both an elected member and an employee of the same local authority.

[17] The inculcation of values of customer service would appear to be something of a bottom line given other requirements in this Bill emphasise consumer engagement e.g. the consumer forum established in clause 204 and the consumer engagement stocktake in clause 205.

46. **add a clause to the Bill that sets out the statutory function of Chief Executives of the WSE and**
47. **that the Select Committee add a clause clearly stating that the Chief Executive is the employer of WSE staff.**

Bylaws

Note to the reader: Taituarā thanks Shireen Munday, Kaipara District Council and Justin Walters, Whangarei for contributing this section of the draft submission.

These comments focus solely on section 214 of the Bill as presented, noting that it is anticipated the second Bill will likely address all matters regarding any final provisions for bylaws to be transitioned to the entities or otherwise resolved as indicated in the Explanatory Note. It should be noted that it is challenging to provide detailed constructive feedback in this context.

It is good to see that the Bill contemplates the issue of statutory reviews of bylaws and that undertaking such a review shortly ahead of the final confirmed approach anticipated in Bill 2 is counterproductive.

A 'review' of a bylaw (made under the Local Government Act 2002 (LGA)) does not mean a final resolution of a local authority to continue, amend, replace or revoke a bylaw. S160(1) of the LGA states that a review is making the relevant determinations under s155 of the LGA. S160(2) then goes on to state that *after* the review, a must consult on a proposal, which would then be followed by a final decision of the council.

This separation can and does cause confusion in the sector regarding what dates apply to what situation in relation to the requirements of S158 and 159. It is possible for example that the 'review' date of a bylaw could precede the first day of the transition period, but the consultation and final determinations of the local authority may still occur within the transition period. Consideration of how this would affect the intent of section 214 of the Bill is recommended. **Clear guidelines and explanatory notes for the sector are also recommended as to how to apply the final provisions.**

It is irrelevant to include a review under s158(2) of the LGA as any bylaws that have not been reviewed in accordance with the subsection would have been automatically revoked by now. The omission of 'trade waste' in the definition of a water services bylaw is of concern. While the LGA does not provide a definition of 'trade waste', a bylaw that is made in accordance with S148 will very likely deal with wastewater discharges as part of commercial activities and as such should be included in the definition provided.

Clause 159A(3) is potentially problematic. A local authority cannot revoke a bylaw without consultation (s156 LGA) and consultation must be preceded by the review requirements of S155 where applicable, which would apply to any deferred bylaw. It must be presumed that Bill 2 will provide for revocation of water services bylaws during the transition period without having to meet s155/156/160 requirements, noting that some consideration should be given to potentially unintended consequences of this clause depending on the overall intent and approach.

Clause 4 seems superfluous. Clause 5 covers all necessary matters for a bylaw that was

deferred, but which is still in force on the first day of the establishment date.

The definition of 'bylaw' is welcomed to ensure that all relevant water services related provisions can be appropriately captured. Often 'consolidated bylaws' are split into 'parts' (or chapters) and it is suggested that 'parts' are included in the definition for completeness.
A further appropriately worded clause is recommended for completeness. To provide clarity on the deferral of a 'water services bylaw', when that bylaw forms part of a larger individual bylaw, a consolidated bylaw or where there may be dual purposes for a provision (such as the protection of water services and roading or parks infrastructure). This should outline the requirement to progress a statutory review of a bylaw that includes any deferred water services bylaws (eg parts or individual provisions), but that the review excludes the deferred bylaw.

A final concern is that in making a decision to defer, councils are still bound by the decision-making requirements of the LGA and their respective Significance and Engagement Policies which may suggest even consultation on the decision to defer is required. We strongly recommend consideration of these factors in the final drafting.

Suggestions for wording changes as well as reflecting the above comments are provided in track changes.

h159A Review of water services bylaws may be deferred during transition period

(1) The local authority may defer a review required by section 158(1) or 159 if all the following requirements are met:
  (a) the review relates to a water services bylaw:
  (b) for that bylaw, the 5-year period in section 158(1) or (2)(b) or, as the case requires, the 10-year period in section 159 ends in the transition period:
  (c) the local authority makes the decision in the transition period:
  (d) the local authority gives prompt public notice of the deferral:
  (e) that public notice identifies clearly the bylaw.

(2) A deferral under subsection (1) has the results specified in subsections (3) to (5).

(3) The review is required only if the bylaw is not revoked in the transition period.

~~(4) The review, if required, is required no later than the second anniversary of the establishment date.~~

(5) For the purposes of section 160A, the last date on which the bylaw should have been reviewed under section 158 or 159 must be taken to be the second anniversary of the establishment date.

(6) Subsections (2) to (5) apply despite sections 158, 159, and 160A.

(7) In this section,—

bylaw, without limiting the generality of that term as defined in section 5(1), includes—

  (a) a set of bylaws; and
  (b) an individual bylaw in a set of bylaws; and
  (c) a provision within an individual bylaw

establishment date has the meaning in clause 1(1) of Schedule 1 of the Water Services Entities Act 2022

transition period means the period—

(a) starting on the day after the date of Royal assent of the Water Services Entities Act **2022**; and
(b) ending at the close of the day before the establishment date

water services bylaw means a bylaw that relates to all or any of the following:

(a) water supply (as defined in **section 6** of the Water Services Entities Act **2022**):

(b) wastewater:
(c) stormwater.

Recommendation

48. That clause 214 be amended as set out above.

Part Three: Linkages with Other Legislation

We have identified the following matters that relate to the linkages between the Bill and other local government legislation. We return to the comments we made in Part One that the Water Services Entities Bill addresses the far simpler half of the issues reform needs to resolve.

We further add that those issues, and those raised in this part are not 'minor' or 'transitional'. Some such as charging go right to the stated rationale for the reforms. The Select Committee therefore needs to be 'on top' of these issues – now. We are certain local government will not be the only submitters to raise some of these matters,

Charging, Billing, and Enforcement (Rating Act 2002)

The Government's stated rationale for the reforms has been to ensure that the cost of meeting the regulatory standards for three waters remains affordable for all communities. Implicit in that was that there would be some move to a network pricing approach on the part of the WSEs (i.e. little or no divergence in charges paid by consumers within a particular WSE area). Ironically then, the Bill says very little about the powers that the WSEs will have to fund their activities (so much so we were tempted to raise this as an issue in Part One of the legislation).

We accept that there will be some transitional period while charging adjusts from what are effectively 67 local solutions to the funding of three water services to a far more limited number (eventually to three in each WSE service area).We also accept that network pricing brings with it the certainty that some areas will subsidise others. The Select Committee will doubtless have seen concerns expressed by some areas that they will be 'asked to pay for others' (or will encounter this in the submissions process).

There has been some speculation that local authorities will be asked to collect WSE charges through the rating system, at least for a defined period after the WSEs begin operation. Taituarā asserts that the WSEs were created to have scale and financial capability and will have an asset base and financial capacity that many entities in NZ could only dream of. Further, the balancing of transitional matters and the design of funding systems is a matter that the WSE Boards should be taking accountability for, from 'day one'.

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

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

Recommendation

49. That the Select Committee include a provision in this Bill ensuring that WSE charges are assessed and invoiced separately from local authorities.

WSE Charges and the Rates Rebates Scheme

One of the lessons from the 2009/10 Auckland reorganisation is that only those charges legally regarded as rates are included in the coverage of the Rates Rebate Scheme. In other words, a metered water charge levied under the Rating Act and payable to a council would be covered by the scheme, the same charge levied by a WSE would not be (regardless of whether the local authority is the collection agent).

The practical effect of this is to reduce entitlements of low-income ratepayers under the scheme. We understand that Auckland Council now 'tops up' the entitlement that eligible ratepayers receive from its own revenues.

This might be an issue that creates opposition to the reforms in and of itself, especially given the scale of increases in water charges, even under the reform proposals. It may be that this is a matter that is addressed alongside the funding and pricing powers, though we've seen no sign of any consideration in the policy process to date.

Recommendation

50. That the Committee agree that any charges levied by WSEs should be included within the ambit of the Rates Rebate Scheme and amend the Bill accordingly.

Assessments of Water and Sanitary Services (Local Government Act 2002)

Local authorities are required to undertake an assessment of the state of all water and sanitary services in their district.[18] The transfer of water services to the WSEs would see a transfer of the information and most of the decision-making authority to the WSEs. While there are a large number of private services these are the responsibility of Taumata Arowai. At a minimum these services need to be removed from scope of the assessment, and the responsibility transferred to the WSE.

[18] This includes: the supply of drinking water, sewage treatment and disposal, drainage works, cemeteries and crematoria, swimming pools, dressing sheds, disinfecting and cleansing stations, public toilets and works for the collection and disposal of refuse, nightsoil, and other offensive matter.

More fundamentally, when we look at the other services that the Health Act treats as sanitary services we become even more convinced the Assessment is archaic. To our knowledge, no local authority operates a facility for the collection of nightsoil, and similarly no local authority operates a disinfection station.[19] Local authorities operate public baths but these are swimming pools provided for recreation rather than sanitation, and any changing sheds provided are either provided to support a recreational facility or for public convenience in areas such as beaches.

Local authorities do operate cemeteries and crematoria and have oversight of waste management activities (if not providing the actual facilities and the collection). Assessment of needs should form part of the asset management planning for these activities (noting asset management planning is a statutory responsibility).

In short, less and less of the assessment falls within the purview of local authorities. We recommend removing the assessment from the Act, and with that removed there would be nothing to form the basis of an LTP disclosure on any the variations.

Recommendations

That the Select Committee:

51. amend the Bill by adding a requirement for the WSEs to conduct an assessment of drinking water, sewage treatment and disposal and drainage works in their area

52. add a consequential amendment to the Local Government Act repealing sections 125 and 126 of the Local Government Act.

Three Waters and the Accountability Regime (Local Government Act 2002)

Three water services are firmly embedded in the legislative provisions governing long-term plans (LTPs). At the time of writing the 'due date' for the next long-term plans is a little less than two years away. But the bulk of the work preparing a long-term plan actually happens between twelve and eighteen months from the 'due date', this is a case of 'the sooner, the better' for changing the law.

Local authorities are required to separately disclose information relating to drinking water, sewage treatment and disposal, and stormwater drainage in their LTPs. We have independently undertaken a 'find and replace' on the use of these terms in the accountability provisions of Part Six and Schedule 10 of the Local Government Act

[19] In the modern era, we're not aware of any private schemes for the collection of nightsoil or the cleansing and disinfection of human beings (outside of hospitals).

Financial Strategies and Infrastructure Strategies

We have already noted the similarities between these provisions and the requirements local authorities are under. Section 101A of the Local Government prescribes the contents of a financial strategy, The mandatory disclosures are very territorial authority oriented (and possibly growth authority oriented) as well as an encouragement to 'tick boxes'. The move of three waters to the WSEs, removes three of the five mandatory groups from the disclosures about the capex and opex involved in providing network infrastructure. Rather than amending the reference we favoured stripping this out, alongside the requirement to disclose capex and opex associated with providing from population and land-use change.

That leaves a financial strategy that has to describe the financial implications and drivers for meeting the existing levels of service/accommodating new requests (as determined by the local authority). The strategy would also retain the self-set limits on rates and dent , and the financial targets for investments. This seems much more in keeping with the notion of the financial strategy as a unique story. It will call for the exercise of greater judgement by local authorities which would be tested in any audit process.

Likewise the move of the three waters greatly reduces the scope of this a local authority infrastructure strategy to the point where it is really a strategic asset management plan for at most two activities as a matter of law (and one for all but six of the local authorities). Most of us queried the value of such a document and wondered if this was not already captured by, for example, any requirements to give effect/act consistently with a regional spatial strategy. Most of us therefore favour removing it *in totality*.

Recommendations

53. That the Select Committee amend section 101A, Local Government Act 2002 to require local authority financial strategies to disclose:
- **(a) the financial implications and drivers for meeting the existing levels of service/accommodating new requests**
- **(b) the local authority's self set limits on rates and debt**
- **(c) the local authorities targets for its financial securities and equity investments and its rationale for holding these assets.**

54. That the Select Committee amend section 101B, Local Government Act 2002 to align the required disclosures of local authority financial strategies with those the Bill would place on WSEs (and as amended by our recommendations above)

Non-financial Performance Measures

Section 261B requires the Secretary of Local Government to make performance measures for each of the five 'mandatory' groups of activities. The move of the three waters services to the WSE includes a move of the obligations on local authorities under the Health Act.

Delivery cannot be said to be by or on behalf of local authorities. The requirements to make regulations covering three water services should be repealed.

These measures were intended to provide a common language for local authorities and communities to talk about levels of service in a concrete way. We see little evidence that this occurred after three full LTP rounds and six or seven annual plan/report cycles. Other than the Department itself, we've seen no indication that any agency is actually using these to compare levels of service. We recommend that the regulations be revoked in toto and that the legislative provisions be repealed.

Recommendation

55. That the Select Committee recommend the repeal of the requirement that the Secretary for Local Government set mandatory performance measures under section 261B, Local Government Act.

A note about the Annual Report and Annual Plan

Many, but not all, LTP requirements are replicated in the requirements for the annual plan and have a reporting 'mirror' in the annual report i.e. the annual plan states your intentions, the annual report states the actual report. Although not of the same degree of urgency as amendments to LTP matters[20] the sector would welcome clarity on these matters as early as possible.

Recommendation

56. That the Select Committee note that many LTP requirements have flow on impacts to the annual plan and annual report requirements and will need to be address now, or in the second Water Services Entities Bill.

Public Works Act 1981

While WSEs are a purpose built entity they both provide network infrastructure and remain in public ownership. While we've not attempted a comprehensive analysis for the Public Works Act 1981 powers to acquire land, it is clear that these entities will either need access to these powers (or alternatively other powers to acquire land as they appear in the legislation governing other network infrastructure providers).

[20] Preparation of the first annual plan after the transfer of water services will not start until October 2024). Preparation of the first annual report after the transfer of water services will not start until April/May 2025.

Of course, the most publicly visible power available under the Public Works Act is the compulsory acquisition of land for public works. This comes with a general requirement that any property that is not subsequently required for these works is 'offered back' to the original owner or their successor. The WSEs are going to inherit a large number of capital projects in progress, and projects where land has been acquired for works that have not been started but were programmed to commence at a future time. We expect the default assumption was that land acquired in this way was to transfer to the WSE, but would such a transfer trigger the offer back provisions of the Act.

Although not a Public Works Act issue, a related matter is whether the WSEs will be deemed a network operator for the purposes of the Resource Management Act 1991 (and any successor legislation such as the upcoming Natural and Built Environments Bill)?

These may be issues that are being treated as sitting with the powers and duties of the WSEs, in which case they will presumably be resolved in the upcoming bill. We observe that although these issues aren't necessarily customer-facing issues in the manner of those set out in Part One, they are every bit as complex. The Select Committee may want to seek assurance from officials that powers under the Public Works Act 1981 are on the policy work programme for the second Bill.

Kainga Ora – Homes and Communities Act 2019

This legislation gives Kainga Ora the powers of an urban development authority. That includes powers to define a development area, build infrastructure and recover the capital and operating costs through the local authrority's rating system by way of a targeted rate. The Select Committee may want to reflect on whether the costs of any three waters infrastructure should be met by charges through the WSEs.

Infrastructure Funding and Financing Act 2020

This legislation established a new funding and financing model to enable private capital to support the provision of new infrastructure for housing and urban development. In essence, private developers create an entity known as a special purpose vehicle that develops a proposal to build the necessary infrastructure to serve an area (say a water treatment plant), borrows the funds and then levies a charge to repay the loan (collected by local authorities).[21]

The model is developed on the assumption that the infrastructure build by the SPV will be connecting to that provided by local authorities. As part of the process local authorities are called on to provide an infrastructure attest, that is to say that they are happy that the proposed infrastructure meets the requirements to connect with their infrastructure. That will need broadening to allow the WSEs to provide the same attest as the future owners if three waters infrastructure.

[21] As fas as we know the only such scheme in operation at the present time is the so-called Milldale development north of Auckland, operated by Crown Infrastructure Partners.

There are also similar accountability issues to those raised with the Kainga Ora-Homes and Communities Act.

Recommendation

57. That the Select Committee seek assurance from officials that the interface between the WSEs and the following legislation will be addressed in development of the second Water Services Entities Bill: the Public Works Act 1981; the Resource Management Act 1991 and successor legislation; the Land Drainage Act; the Kainga Ora – Homes and Communities Act 2019 and the Infrastructure Funding and Financing Act 2020.

Questions for Discussion

Are there linkages between this Bill, the WSEs and other legislation that you consider have been missed? If so what are they, and are these issues that must be addressed now r can they wait for the second Bill?

Are there any other matters that you'd like Taituarā to include in its submission on this Bill? If so, what

Are there any matters in this draft that you consider Taituarā should exclude from its final submission? If so, then what matters should be removed and why?

WSE Bill: LGNZ submission outline

This is an outline of LGNZ's proposed submission for sector feedback. The outline provides our commentary on the Bill and initial thinking on the points we propose to make. The points in the outline will be fleshed out in more detail in our draft submission, which will be shared with the sector on 13 July.

Please provide feedback on the draft outline below, especially in response to the questions listed in **appendix 1.** You can provide your feedback to submission@lgnz.co.nz with the subject "WSE Bill feedback" by Friday 8 July.

We know this is a tight turnaround – we are driven by the Select Committee timetable.

Executive Summary:

- *This section will summarise the submission's recommendations*

Introduction:

- LGNZ's role and function.
- Sector involvement with Government's policy development process to date, including background on LGNZ's previous engagement with sector and our feedback to the Government.
- Diversity of views across the sector on Government policy choices and bottom lines – including the fact a number of our members are opposed to the four entity model in its entirety.
- Common concerns across the sector on some key themes – the focus of this submission.
- This submission addresses the workability of the model currently on the table.

Context/Background:

- Sector as a whole acknowledges the need for reform – broader system failure has created longstanding water issues affecting many communities and their wellbeing, and these issues have worsened with time.
- Sector is unified in seeking reform and better outcomes for communities (including better outcomes for health, climate change mitigation and adaptation, the Treaty partnership, and community wellbeing).
- Acknowledge that major reform is challenging but the current system settings combined with inaction over many years have created the current situation.
- The interactions and inter-dependencies relevant to 3W are many and complex – this complexity is unavoidable and a feature of the current system as well as any new model.
- The Heads of Agreement acknowledged that councils are leaders in community wellbeing and placemaking. Any new system must recognise and uphold this, and the legislation must reflect this.
- Any major institutional reform will draw support and criticism from a sector as diverse as ours – this is to be expected.
- Major institutional reform quite naturally engages ideological and political interests about the best way to deliver on outcomes/objectives.

- This reform is difficult for the sector to engage with because there is so much detail still to come – in Bill 2, the constitutions, and via other Government reform programmes.
- The sector needs clarity, especially about the transition.

Intent and scope of LGNZ's submission:

- Our submission is focused on the legislation, specifically the model that is on the table.
- Key concerns and how those concerns could be addressed through the legislation and broader reform programme.
- Specific comment on certain aspects of the legislation – with a focus on ensuring the legislation is workable.
- Reference Beca advice on how the WSE Bill will (or will not) enable and support councils to continue to play their critical placemaking role.

Relationship to submissions by member councils:

- Individual councils' perspectives are important because they reflect how the proposed reform will work for unique communities – based on their specific preferences and circumstances.
- Our submission captures commonly held concerns across the sector – a national perspective.

Engagement with councils and communities:

- Given the significance of the Bill and community interest in this reform, we encourage the Select Committee to travel to hear oral submissions.

Substantive feedback on the Bill:

Area/theme	Points
Concerns around four entity model	• Model needs to work for councils and their communities. • Recognise variety of inputs that have fed into the current model, including previous sector feedback. • However, range of high-level concerns remain: not all councils directly represented on RRG; large, bureaucratic, complex entities involving multiple layers; how communities will engage with large-scale entities; absence of conventional LG accountability mechanisms; etc. Concerns are explored in detail in relevant sections below. • The WSEs will have a singular focus on three waters – but three waters services and infrastructure are closely connected to many other activities councils perform, including supporting community wellbeing, development and placemaking. Councils need greater clarity around how WSEs will connect into the broader system.
Centralisation must be balanced with increased local voice	• This legislation, like RM reform, sets out a shift to an aggregated, regional approach to planning and delivery. This must be balanced with local consultation and democratic input from the communities that are effectively pooling resources to access the advantages of greater scale and expertise. • Communities must still have their say on things that matter to them, and the right level of influence over decisions that affect them. This is a critical concern for councils. In other words, the regional/aggregated

	approach of the WSEs should not leave communities worse off than they are under the current system. • The legislation proposes a range of mechanisms for allowing councils and communities to have input on things that matter to them. But this potentially creates a system that is more complex and bureaucratic. Introducing additional administrative layers means effective channels to communities and consumers must be created. It must be demonstrated that their introduction will (over time) support and enable better outcomes for communities/consumers than they experience now (or would experience in the future under the current system).
Community wellbeing must remain central	• Councils are leaders in community wellbeing and placemaking – and the WSEs must support councils to continue to play that role. • Concerned by the absence of any reference to community wellbeing in the Bill. Three waters services are integral to community wellbeing and promoting the wellbeing of communities is a critical role for councils. • Recommend explicit reference to community wellbeing in the legislation's objectives and operating principles.
Councils' placemaking role is critical	• How the WSEs integrate with other council planning processes (eg long-term planning, broader council asset management planning, resource management planning) is a key concern. • WSEs' place in the wider system relative to councils (and other bodies) should be explicit. It must make clear that WSEs are an implementer of wider plans for community wellbeing, growth and development. • Concerned at the lack of priority given to supporting and enabling councils' critical placemaking role. Want to see a specific objective and operating principles addressing this included in the legislation. • The focus in the Bill's objectives around housing and urban development doesn't capture the breadth of councils' placemaking roles. Would the focus on housing and urban development be better addressed through the GPS mechanism? • Concerned by the lack of consideration given to the interface with current (and new) RM systems. • Having to submit on this Bill before we know key details of new RM legislation and other parts of the 3W framework is far from ideal. We're concerned by the lack of clarity about which part of the system will end up determining particular matters that other parts of the system need to adopt or comply with. • Concerned by the lack of consideration given to how to resolve competing priorities of WSE and individual councils/communities. • Support the operating principle around WSEs partnering and engaging early and meaningfully with councils and their communities. But how will this work in practice to create clear and reliable connections between 3W decisions by WSEs and the broader system? This will be critical to councils' continuing to play their placemaking role. • Also support the operating principle of WSEs co-operating with, and supporting, other WSEs, infrastructure providers, local authorities, and the transport sector – all are critical to placemaking outcomes and influence or depend on the provision of 3W services. Again, how will this work in practice? • See our supporting paper on placemaking

Transition should be phased	• Entities should be transitioned into operation when they (and their constituent councils) are ready. To ensure progress is made, timeframes and deadlines should be agreed to in advance. • One entity could be piloted first. • Concern there may not be the capacity/capability to cope with universal change simultaneously – especially with other reforms going on. • A staged approach to implementing the new RM system is being contemplated (tranches of regions shifting to the new planning system). A similar approach should be considered for 3W reform.
Potential staged approach to stormwater	• The proposals for stormwater are under-developed and the scope/impacts are uncertain. There is some concern that stormwater represents a source of material risk for WSEs and councils that is hard to quantify and therefore hard to justify. • This is complicated by the timeframe for RM reform. It's not entirely clear how stormwater can be designed to fit with that regime. There is a risk of 'double-change' in a short period. • Stormwater is intrinsically linked to placemaking and closely connects with a number of other council roles and functions. Many of these involve material overlaps: they serve different functions at different times. • Stormwater can be intrinsically linked with other council services, which may it difficult to immediately transfer to the WSEs. • The transfer of 3W staff to WSEs could mean councils aren't left with any capacity to manage stormwater. • A "joint arrangement" (between WSE and council/s) could be put in place initially with its own transition pathway.
Te Mana o Te Wai	• Support the focus on Te Mana o te Wai – the health of water is fundamental to all New Zealanders and their communities • Support the requirements around Te Mana o te Wai statements. • Also support the need for transparent accountability around the Te Mana o te Wai statements through strategic planning and reporting documents. • Need to think about how these obligations (particularly around giving effect to Te Tiriti/The Treaty) are reflected in other LG legislation. There needs to be consistency across all activities that impact on communities – especially given the shift to giving effect to Te Tiriti in the RM space, and potential for Te Mana o te Wai to be incorporated into the Natural and Built Environments Act (in addition to Te Oranga o te Taiao, which was included in the exposure draft of the NBA). • Support the requirements around maintaining systems and processes for continuing education of all Board members to gain knowledge of, and experience and expertise in relation to, the principles of Te Tiriti/the Treaty. • To truly realise Te Mana o te Wai, WSEs will need to partner closely with mana whenua in the same way some councils already are. Te Mana o te Wai statements should be woven into transition arrangements and be there from day 1. • Mana whenua will need resourcing support from central government or the WSEs to develop these statements. • How will the Government hold entities to account when there is non-compliance? For example, conflict between giving effect to Te Tiriti and

	Te Mana o te Wai and meeting commercial goals/objectives. Who regulates and upholds Te Mana o te Wai?
Central policy direction must come with central investment	• We support in principle the Government Policy Statement on Water Services. Councils and communities must have opportunities to feed into this. There are lessons from experience of Waka Kotahi and councils with Land Transport GPS (including the impact of change on long run planning and funding). • There could be a specific requirement to consult with all councils around the development of the GPS – particularly given its connection to environmental matters, placemaking etc. • In time there may be a need for consultation with the joint committees established via RM Reform. • How will the GPS integrate with other national direction that will be developed under the proposed National Planning Framework? • We recognise the need for the Crown intervention framework and the importance of overall system oversight. But this means a significant amount of power is concentrated in the centre. The legislation needs to strike the right balance between local/multi-regional needs and priorities vs national control. • Ultimately, if there is to be more central policy direction, we'd also except to see greater central government investment. We're disappointed the Government didn't pick up on the Governance Working Group's recommendation #44[1] and see this as a necessary element in justifying CG ability to set expectations through a GPS. Any other approach risks an unfunded mandate. • We strongly disagree with the introduction of clause 26 of Schedule 1 to the Bill. This represents a cost-transfer (dis-investment) by Government, on top of the ongoing cost of running the WSE model once established.
Communities need assurance of service when things go wrong – locally and quickly	• Concerns around whether communities will genuinely and meaningfully connect with large multi-regional entities. Communities have existing connections to and relationships with councils. How will that connection feed into (or ultimately be replicated by) the WSEs? • Currently no certainty around on-the-ground presence in different locations – and this is needed. For example, who will respond quickly to broken pipes/blockages when things go wrong? There must be dedicated on the ground local delivery and maintenance teams; 24/7 responsiveness through support centres etc. The legislation (or constitutions) should guarantee that local contractors be used and retained for scheduled and reactive works. • Does section 117 mean that WSEs could contract the delivery of water services out to councils? This needs to be clarified.
Existing mechanisms capturing local voice must feed in	• Currently councils have the democratic mandate to make decisions on behalf of their communities across their portfolio of responsibilities. It needs to be clearer how councils (and communities) will feed into key WSE planning/accountability documents aside from councils having input via RRGs (and potentially RAPs). How can existing council

[1] **Recommendation 44**: The Crown confirm to iwi and councils the size of investment required to address issues of historic degradation of waterways and inequalities in the provision of water services for their consideration, along with a plan as to how addressing these issues will be funded.

	engagement with communities (via long-term plans, asset management plans, infrastructure strategies and community plans) inform the various planning documents that the WSEs will be responsible for preparing? • Recommend that there's a specific requirement for the various WSEs' planning/accountability documents to take into account council planning/strategy documents. Where possible the WSEs documents should adopt and give effect to council planning/strategy documents.
Feedback on Regional Representative Groups	• Representation of council views and needs in the new system is critical. • In principle, we support these and support the arrangements around both local government and mana whenua representation. • Important in terms of understanding and applying Te Mana o te Wai and giving effect to Te Tiriti/The Treaty. • There needs to be scope to build on existing successful partnerships between councils and mana whenua. • The role and function of the RRG and its members (including what they will **not** be doing or responsible for) needs to be clear and understood by all stakeholders. That means stakeholders know where to go in the overall WSE/3W system to seek influence or accountability for particular matters. For example, should they go the water regulator, the economic regulator, the WSE board/management, the RRG or their council. • Pleased to see stronger accountability between the WSE Boards and RRGs – including the RRG appointing the board, approving the Statement of Intent that will guide the board, and setting a Statement of Strategic and Performance Expectations that the Board must give effect to together with performance reporting and monitoring. These additional accountability tools also create a direct link back to local voice/input. • Good to see that the RRGs have appropriate clout in terms of their ability to set strategic direction. • Subject to there being sufficient other direct links between the WSEs and the individual councils/communities they serve, RRGs may need to play more of a role in ensuring there are connections with the communities they represent. • Is it the role/function of an RRG to engage with all communities in the area covered by a WSE and, if so, how will they achieve this for communities that do not have a council representative on the RRG? • Flexibility around the appointment of RRG chairpersons/deputy chairpersons/co-chairpersons and deputy chairpersons is positive. • Pleased to see all councils will be involved in making appointments to the RRG (and will be able to establish their own rules to govern that appointment process). • Should RRG membership be subject to competency requirements linked to the role/function of an RRG, to make sure an RRG can effectively perform its role in the overall system? • In terms of resignations from the RRG, need to specify what happens if a council representative who is an elected member is not re-elected in local government elections.
The role of Regional Advisory Panels	• These are a potentially useful mechanism for ensuring that advice on local needs/preferences, views and concerns are fed up to the RRG. However, the role and function of RAPs and their members (including

	what they will **not** be doing or responsible for) needs to be clear and understood by all stakeholders so that appropriate expectations are set. • The RRG and WSE board will still need to apply a regional lens to the inputs received from a RAP to ensure that the overall WSE plan can be delivered within the overall available funding, resources and other operating constraints. • Leaving these Panels optional means local communities could determine what will work for them. However, requiring RAPs for every city/district covered by a WSE would be one way of guaranteeing that there is a way for all TAs and the communities they represent to feed into the decision-making of an RRG. • There should be flexibility to determine the geographical areas that the RAPs represent – but it's an open question whether there should be some mechanism for guaranteeing representation of all geographic areas/takiwā, to ensure local voice across WSE areas is captured.
WSE Boards' composition and accountability	• Agree that the Boards should be competency-based. • This is a marked departure from the status quo, where elected members together perform that governance role. As such they bring local voice to this role, although 3W is not their singular focus nor may it be an area in which they have knowledge, experience or expertise. Because this form of local voice will be absent from the Board, it's critical there's local voice input at other layers of the system. This needs to be at least as effective as provided under the status quo. • In terms of knowledge and expertise requirements, would like to see some knowledge and expertise of local government and broader placemaking. • Accountability of board members to the RRG is a good way of creating a direct link back to democratic, local input. • Agree with the need for the boards to have a minimum number of public meetings – this is a good accountability mechanism.
Constitutions and their development	• Support the approach to constitutions and the ability for there to be local customisation. • Agree that the WSEs should compensate local authority representatives and local authorities for their time. • Agree that the Minister should engage with councils on the development of constitutions. Suggest all council owners should have input, and that the timeframes for providing input are meaningful. • Support the ability of RRGs to make changes to constitutions, so that they can address relevant local matters, including as circumstances might change over time.
Planning and strategic documents	• How WSEs integrate with other council planning roles and functions is a key concern. WSEs should be seen as an enabler and implementer within the wider planning environment, which includes community wellbeing, growth and development. While they may be 'plan makers' for the water piece, they should not dictate the shape of other plans. • Support the *Statement of Strategic and Performance Expectations* being prepared by the RRG to ensure (and be reflective of) local input. Need to ensure constituent local authorities and communities are involved too. Same goes for Statements of Intent

	• Individual council/community input pathways will need to exist for asset management plans, funding and pricing plans and infrastructure strategies. • The Statement of Strategic and Performance Expectations will need to strike an appropriate balance between the scale and priority of work required by WSEs to address current deficits (including to ensure compliance) and new investment to enable growth. • Water services are intrinsically linked to other council assets and infrastructure – and to growth. This must be recognised. Although we recognise there'll be a need for WSEs to address deficits with existing infrastructure, this shouldn't be at the expense of stifling growth and development where that's needed. • Want to avoid WSEs and developers making ad hoc decisions about where growth and development happens. WSEs need to operate in a way that recognises councils' broader leadership role in placemaking and community wellbeing. This includes respect for decisions already made by councils and communities. • Question how the existing strategic documents/plans that councils have prepared with their communities feed into the preparation of all of these documents (eg LTPs, asset management plans, infrastructure strategies, community plans, regional policy statements and district plans etc). And how the new regional spatial strategies and natural and built environments plans will feed in, once RM Reform is implemented. Could there be a requirement for the WSEs' planning/accountability documents to take into account other strategic planning documents that councils (and joint committees under the new RM system) have prepared? • How will the WSEs' infrastructure strategies align with the NZ Infrastructure Strategy? • How will communities have genuine input into the development of these different documents? WSEs will inevitably rely on councils to help collect/co-ordinate views from their constituency – given their democratic mandate to engage with and represent the views of communities, and their knowledge and oversight of other inter-dependencies with water service delivery. If councils are relied upon by the WSEs to do this (including to avoid duplication of effort), their costs should be met by the WSEs, otherwise there is an unfunded mandate. • Reflecting community preferences will need to balanced with compliance with regulatory standards (set by both Taumata Arowai and the economic regulator).
Funding and pricing	• Want to see more detail on how funding and pricing decisions are made. • There is an absence of reference to affordability in the objectives and operating principles of the Bill. This is in the context of councils continuing to make rating decisions. Councils have broader concerns around affordability, equity and communities' ability to pay for different services (which may also include IFF levies). • The sequencing of the Bills mean that when submitting on the core model (reflected in this Bill), councils are being asked to 'assume' that these pricing/funding elements (including issues like price harmonisation or the ability to socialise costs and adopt differential pricing to support social equity) will be resolved satisfactorily down the track.

	• The longstanding historical deficit in infrastructure investment and the legacy of central government decisions impacting water services need to be addressed – and funded. Central Government must develop a funding plan – otherwise we run the risk of setting up new entities that will continue to underinvest, or be unable to address the existing deficit, or costs will fall regionally rather than nationally. • Councils should be given a choice about whether they're involved in billing for water or not.
Debt transfer	• To be able to assess the impact of the new WSE model (including the post-transfer shape of a council's balance sheet), councils require certainty about how the debt transfer will work. This includes what borrowing will be eligible and the process to identify and confirm amounts, as well as transfer mechanics. This needs to be clarified quickly.
Community engagement provisions	• Agree with the requirements to consult and seek input. • The engagement provisions seem sufficiently broad and appear to allow engagement in a wide range of ways. • There could be more explicit reference to the need for engagement with councils. An explicit requirement would provide an added layer of protection/accountability mechanism. • Agree with the establishment of consumer forums – the breadth of communities covered by WSE areas must be represented. Specifically requiring this in the legislation/constitutions this would add another accountability mechanism. • Support the need for a consumer engagement stocktake and agree this should be made public. Councils should have input into this stocktake because they will inevitably continue to receive feedback on how the entities are performing – even if the responsibilities for water service delivery sit elsewhere. WSEs should meet the costs of councils in performing that role to avoid an unfunded mandate issue. • Need to be mindful here also of what other actors in the system are doing (for example, regulators are monitoring WSE performance in this respect too).
Protections against privatisation	• This is a key area of concern for councils and communities – so we support these features (including the changes made as a result of the Working Group recommendations). • Would support entrenchment of these clauses but recognise the absence of cross-party support.
Transition and implementation at a high level	• The reform's success depends on a smooth, well-managed transition. Central government must work closely with local government on this. • Resourcing the transition is critical. Again, we're concerned that the Governance Working Group's recommendation #44 hasn't been picked up by the Government. • The sector is concerned about clauses that remove councils' autonomy during the transition period. For example, around councils' ability to deliver or accelerate existing approved plans and to negotiate requests to second staff and information requests. These clauses signal a lack of trust and confidence. The demands of 'business as usual' (water services included) continue unabated for councils, who also face a pressured and resource constrained environment. Because of this, DIA's ability to restrict and direct should be limited to circumstances where there is

	deliberate obstruction or attempts to undermine the success of the reform. • Community education and engagement needs to be built into the transition, including supporting councils to engage with their communities to help them understand that water services are now the responsibility of the WSEs, not councils. • Support commissioning a review of the operation and effectiveness of the governance and accountability arrangements under the Act. We agree this should include looking at how the WSEs interact with councils and communities. It should also cover the operation and effectiveness of the legislation. It's important that such reviews recognise local government as a key stakeholder. • The review of the WSE legislation should specifically consider how that legislation is integrating with other key legislation (eg Local Government Act, Rating Act, Resource Management Act, new RM legislation).
Connections with other reform programmes	• Bill is drafted on the premise that current local government structures, roles and responsibilities remain the same. • However, the RM Reform and FFLG Review may necessitate ongoing amendments to the Bill (and Bill 2). • Good to see a focus on climate change mitigation and mitigating the impacts of natural hazards – but how will this be managed alongside other, potentially competing objectives and priorities (for example, more housing and urban development)? Central government must give clear direction around how trade-offs are managed. • We support regional councils (and territorial authorities where that's the case) remaining responsible for flood protection infrastructure. Co-investment needs to be seriously explored.

[see questions for feedback on next page]

Appendix 1: Targeted questions for feedback

1. Do you support a phased transition to the new entities? What factors should influence which entities get stood up first and when?
2. Could a phased approach to transitioning stormwater to the WSEs work? Would you support phasing the transition of stormwater? What do you think about the idea of a "joint arrangement" (between WSE and council/s) with its own transition pathway?
3. Water services are intrinsically linked with placemaking outcomes. We're concerned that the WSE Bill doesn't adequately reflect the important placemaking role that councils play. How could the Bill be improved to ensure that the Water Services Entities support councils to continue to play their critical placemaking role?
4. What do you think about the draft piece on placemaking that we've commissioned from Beca – is there any aspects you'd like to see strengthened to support our submission?
5. Do you think there are sufficient mechanisms for communities to feed their concerns and preferences into the Water Services Entities? How could the proposed mechanisms be improved?
6. The Bill provides for CEs and council officers to be territorial authority representatives on the proposed Regional Representation Groups. Do you support this or would you prefer these representatives to be democratically elected members? Should there be any competency requirements?
7. Would you support a requirement that the WSEs, RRGs and Boards take certain local government planning and strategic documents into account when preparing a WSE's strategic, planning and accountability documents? If so, which documents?
8. Councils gather feedback from their communities that will be just as relevant to WSEs as it is to councils. What mechanisms could ensure that this feedback informs the work of the WSEs?
9. The Bill currently provides flexibility around the establishment of Regional Advisory Panels. Do you think this should be left up to the WSE or should the legislation/constitutions require that every city/district covered by a WSE area be represented on a RAP? This would add a material additional cost for the WSE – is that cost warranted? Or, to avoid duplication of resource/effort, should this be held in reserve and only be used if other mechanisms fail to achieve the outcomes this would support?
10. While more national direction and greater accountability should improve the quality of water services, we are concerned about the shift to regional aggregation. Do you agree that it's critical that the Crown has a role in funding the establishment and ongoing operation of the new three waters system?
11. How do you think the proposed model will or will not support areas experiencing growth to meet their needs?
12. Assuming the preference is that flood protection infrastructure remains in regional council (and in some cases unitary/territorial authority) control, would you support us making a recommendation in our submission that central government (and/or the WSEs) should adopt the Te Uru Kahika proposals for central government co-investment in flood protection infrastructure?

1.2 SUBMISSION ON THE EXPOSURE DRAFT OF THE NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY

File Number: **COU1-1411**

Author: **Dylan Muggeridge, Acting Group Manager, Customer and Community Partnerships**

Authoriser: **Doug Tate, Chief Executive**

Attachments: **1. Draft Submission Exposure Draft National Policy Statement Indigenous Biodiversity ⇩**

PURPOSE

The matter for consideration by the Council is to endorse a submission on the Exposure Draft of the National Policy Statement for Indigenous Biodiversity.

RECOMMENDATION FOR CONSIDERATION

That having considered all matters raised in the report:

a) That Council endorse the submission on the Exposure Draft of the National Policy Statement for Indigenous Biodiversity, with authority delegated to the Chief Executive to make minor amendments as required.

BACKGROUND

Nature is part of our everyday lives as we enjoy the great outdoors of Aotearoa New Zealand with our families. Our native trees, plants, birds, animals, insects, and the places they inhabit are all part of who we are. Native biodiversity helps provide clean water, nutrient cycling, mahinga kai (food provisioning) and materials for other purposes such as raranga (weaving) and rongoā (medicinal uses). However, our indigenous biodiversity is declining and is at risk of becoming extinct.

In 2019, the Government proposed a way to build on the work already underway by many Councils and community organisations to maintain and protect our precious indigenous biodiversity.

The proposed Draft National Policy Statement for Indigenous Biodiversity (NPSIB) was released on 1 November 2019 and set out the objectives and policies to identify, protect, manage and restore indigenous biodiversity under the Resource Management Act 1991 (RMA).

Council made a submission on the draft National Policy Statement as part of a Regional Submission, noting that work was underway at the time reviewing the District's operational District Plan as a whole of plan review.

Officers in the development of the Draft District Plan and now Proposed District Plan have worked to ensure that the Proposed District Plan aligns with the draft National Policy Statement, while not seeking to overreach beyond the current standard of protection required and afforded in the existing operational District Plan. Council has also been guided by its Ecologist Gerry Kessels, who has worked alongside the Ministry for the Environment in the preparation and development of the Exposure Draft.

The Exposure Draft of the National Policy Statement for Indigenous Biodiversity is now released for further feedback and consultation. Consultation closes on 21 July 2022. Council is in a unique position, having just completed the substantial review of its District Plan and incorporating the Draft National Policy Statement outline (in 2019) to contribute meaningfully to the sector with its learnings and experiences.

Officers have drafted a submission; the next section of this report outlines the content of the submission.

DISCUSSION

At a high-level, the proposed submission provides for Council's broad support to the Government's focus on biodiversity, and the stated objective in the exposure draft *to protect, maintain and restore indigenous biodiversity in a way that recognises tangata whenua as kaitiaki, and people and communities as stewards, of indigenous biodiversity, and provides for the social, economic and cultural wellbeing of people and communities now and in the future. Council's proposed submission covers three substantive areas*.

This objective aligns with Council's vision for the District articulated through project Thrive, and also broadly aligns Council's policy position on the protection of the District's indigenous vegetation and habitats of indigenous fauna from the threats of modification, damage or destruction through inappropriate subdivision, use and development.

The Proposed District Plan (currently going through the Hearings process) adopted by Council and notified in May 2021, also contains proposed objectives that also broadly align with the Government's overarching objective contained in the exposure draft, in particular:

1. *Protect the District's areas of significant indigenous vegetation and significant habitats of indigenous fauna from inappropriate subdivision, use and development.*
2. *Maintain and enhance the biodiversity of indigenous species and the natural habitats and ecosystems that support them so there is no net loss of indigenous biodiversity*
3. *Recognise the economic, social and cultural wellbeing of people, and in particular the rural community, that depends on, amongst other things, making reasonable use of land.*

Council's proposed submission, contained in the attachment, covers 3 key substantive points:

1. There appears to be broad alignment between Council's Proposed District Plan, the NPS-Indigenous Biodiversity Draft that the Government released in 2019 and the 2022 Exposure Draft that the submission focuses on. Based on Council's initial review of the 2022 NPS-IB exposure draft, Council believes that the process it has undertaken to date in preparing its Proposed District Plan will put it in good stead to enable the (yet to be finalised) District Plan to give effect to the (yet to be finalised) NPS-IB, including giving effect to the provisions around Significant Natural Areas (SNAs).

2. Council has a learnt lessons and experiences from the review of the District Plan since 2017, in particular around the identification and mapping of SNAs – a worthwhile exercise but one that is long (approximately 4 years and still yet to be resolved), onerous, and resource-intensive. Council through the proposed submission offers to share these experiences with officials further, but based on the exposure, the proposed submission recommends the Government:

- provide more time for the identification and mapping of SNAs; and
- explore alternative methods for local authorities to identify and provide for SNAs within planning documents, to reduce cost and ensure a more efficient process for councils – in particular those with a large landmass but a small rating base.

3. There appears to be little thought given to the alignment (or not) this National Policy Statement Indigenous Biodiversity (NPS-IB) will have with with Resource Management Act Reforms that are currently underway. Council through the proposed submission expresses significant concerns with the apparent lack of thought being given as to how the NPS-IB will integrate with the Resource Management Act reforms. The implementation plan is silent on how the NPS-IB will be integrated into the RMA reforms, and what this will mean for councils trying to meet their statutory requirements (either under the RMA or future resource management system). The proposed submission raises concerns for Council that policy and legislative change is being driven by the Government and government agencies in silos,

without clear thought being provided as to how the policy and legislatives are integrated across the reforms currently being undertaken.

RISK ASSESSMENT AND MITIGATION

There are no obvious risks in making this decision.

FOUR WELLBEINGS

The protection of our natural flora and fauna contributes the four wellbeing's in the widest sense. From the protection of biodiversity for tourism, through to supporting the maintenance of natural ecosystems that exist.

Overall the intent of the National Policy Statement Indigenous Biodiversity is to support wellbeing of the environment, in its widest sense.

DELEGATIONS OR AUTHORITY

The Strategy and Wellbeing Committee have the delegation to make this decision.

SIGNIFICANCE AND ENGAGEMENT

In accordance with the Council's Significance and Engagement Policy, this matter has been assessed as of some significance.

OPTIONS ANALYSIS

Three potential options for Council to consider include:

Option 1 - Endorse the Submission
Endorse the draft submission, with delegated authority being given to the Chief Executive to make minor amendments.

Option 2 - Endorse the Submission with Changes
Endorse the draft submission, with delegated authority being given to the Chief Executive to make minor amendments, and further change points being noted by the Elected Council.

Option 3 - Not making Submission
Choose to not make submission.

	Option 1 **Endorse the Submission**	**Option 2** **Endorse the Submission with Changes**	**Option 3** **Not make a submission**
Financial and Operational Implications	There are no new or unknown implications for this decision.	Subject to the extent of changes this can be achieved.	There would be no implications.

Long Term Plan and Annual Plan Implications	There are no implications.	There are no implications	There are no implications
Promotion or Achievement of Community Outcomes	This option sees Council advocate for the Wellbeing of our community and seek the promotion of the outcomes community have mandated.	This option sees Council advocate for the Wellbeing of our community and seek the promotion of the outcomes community have mandated.	This option does not achieve the advocacy and leadership role expected of governance to promote or achieve the community outcomes sought through project Thrive.
Statutory Requirements	There are no statutory requirements.	There are no statutory requirements.	There are no statutory requirements.
Consistency with Policies and Plans	Making a submission ensures Government understands Council's position on matters.	Making a submission ensures Government understands Council's position on matters.	It is unclear how this options supports consistency with Council policy and position.

Recommended Option

This report recommends **option one – endorse the submission** for addressing the matter.

NEXT STEPS

Relative to the option that Council adopts, Officers will finalise the submission and submit this through to the Ministry for the Environment.

We will also update the Council website with information of what has been submitted.

RECOMMENDATION

That having considered all matters raised in the report:

a) That Council endorse the submission on the Exposure Draft of the National Policy Statement for Indigenous Biodiversity, with authority delegated to the Chief Executive

to make minor amendments as required.

CHBDC Draft submission on the exposure draft of the National Policy Statement for Indigenous Biodiversity

Introduction

Central Hawke's Bay District Council (Council) welcomes the opportunity to submit on the exposure draft of the National Policy Statement for Indigenous Biodiversity. This submission has been approved by the Elected Council and the Chief Executive.

Council broadly supports the Government's focus on biodiversity, and the stated objective in the exposure draft *to protect, maintain and restore indigenous biodiversity in a way that recognises tangata whenua as kaitiaki, and people and communities as stewards, of indigenous biodiversity, and provides for the social, economic and cultural wellbeing of people and communities now and in the future.*

This objective aligns with Council's vision for our District, articulated through project Thrive in 2017 and reaffirmed through Council's recently adopted Community Wellbeing Strategy. In particular our strategic goal to be Environmentally Responsible recognises that Central Hawke's Bay is home to a unique and beautiful landscape, and that we must celebrate our environment and work together to enhance our local and natural wonders and resources. Holistically our approach to protecting the environment extends across the vast activities of Council – from removing wastewater discharges to our waterways, to protecting our high-class soils from subdivision, and supporting the enhancement of biodiversity.

This objective also broadly aligns with Council's policy position on the protection of the District's indigenous vegetation and habitats of indigenous fauna from the threats of modification, damage or destruction through inappropriate subdivision, use and development.

Council is currently undergoing a full review of its District Plan. The review started in 2017, and is currently going through formal hearings under the Resource Management Act (RMA). The Proposed District Plan (PDP) adopted by Council and notified in May 2021, contains proposed objectives that also broadly align with the Government's overarching objective contained in the exposure draft, in particular:

> *1. Protect the District's areas of significant indigenous vegetation and significant habitats of indigenous fauna from inappropriate subdivision, use and development.*
> *2. Maintain and enhance the biodiversity of indigenous species and the natural habitats and ecosystems that support them so there is no net loss of indigenous biodiversity*
> *3. Recognise the economic, social and cultural wellbeing of people, and in particular the rural community, that depends on, amongst other things, making reasonable use of land.*

Council also recognises there is a need to balance protecting and enhancing the District's indigenous biodiversity while allowing for rural landowners to effectively and efficiently farm their land. Except where very high conservation values exist, Council is confident that a wide range of activities can be accommodated, with appropriate standards to ensure adverse effects of these activities are avoided, remedied or mitigated.

Alignment between Proposed District Plan, the NPS-Indigenous Biodiversity Draft (2019) and the 2022 Exposure Draft

The Draft National Policy Statement on Indigenous Biodiversity (NPS-IB) published in 2019 set out objectives and policies to identify, protect, manage, and restore indigenous biodiversity under the RMA. The Draft NPS-IB was not passed as legislation, and as such did not have legal effect, however it was used as guidance in reviewing the District Plan and preparing the proposed provisions contained within it.

Once the NPS-IB takes effect, the Council will be required to ensure its District Plan is in accordance with the provisions of the NPS (s74(1)(ea)). Central Hawke's Bay District Council elected to anticipate the NPS-IB as much as possible in developing provisions for the Proposed Plan, based on provisions that were contained in the 2019 draft.

Based on Council's initial review of the 2022 NPS-IB exposure draft, Council believes that the process it has undertaken to date in preparing its Proposed District Plan will put it in good stead to enable the (yet to be finalised) District Plan to give effect to the (yet to be finalised) NPS-IB, including giving effect to Subpart 2 of Part 3 (Significant Natural Areas).

This is based on the fact that there appears, in particular, to be no significant changes to the criteria for identifying areas that qualify as significant natural areas between the draft NPS-IB published in 2019, and the exposure draft of the NPS-IB that this submission focuses on.

Experiences and lessons learnt from the review of the District Plan – identification and mapping of SNAs

Council wishes to outline some of the reflections and lessons learnt from the past 5 years (since the review of the District Plan formally started in 2017). In particular, Council wishes to share its experiences with the identification of Significant Natural Areas of significant indigenous vegetation and significant habitats of indigenous fauna in the District – a worthwhile process, however one that has been lengthy, resource-intensive, costly, and at times controversial within our community. In short, a process that is very onerous on a small rural Council with a small rating base.

The review and mapping of SNAs has been ongoing for the past 4 years, since 2018. This has included several assessments of the natural heritage and SNAs in the District, and contracting of an ecologist to proceed with the finalisation of the SNA assessment, including conducting some ground-truthing and undertaking consultation with landowners, as a number of limitations were identified with the initial desktop assessments.

While oral submissions on SNA mappings are yet to be heard as part of the District Plan review, a number of submissions objecting to SNAs and/or delineation of SNAs in particular have been received. Council expects that the maps of SNAs will continue to be challenged through the remainder of the review process, and could be subject to appeals once a new operative district plan has been adopted in May 2023.

Based on our experience, Council believes that it would be very ambitious for other local authorities that have not undertaken the mapping of SNAs to date, in particular those with limited resources and small rating bases, to complete this process within a period of 5 years after commencement date of the NPS-IB as suggested in the exposure draft. A period of 8 – 10 years is likely more realistic, in particular given the limited pool of expertise (ecologists) available

in New Zealand to undertake these assessments (desktop and ground-truthing), and limited resources within Councils, especially when there are numerous competing priorities for competent staff to juggle.

It is therefore Council's view that the Government should:

- provide more time for the identification and mapping of SNAs,
- explore alternative methods for local authorities to identify and provide for SNAs within planning documents, to reduce cost and ensure a more efficient process for councils – in particular those with a large landmass but a small rating base.
-

Council is happy to further share experiences learnt from out District Plan Review process with officials as required, to provide further insights as to how the identification and mapping and SNAs takes place in practice within a local authority.

Alignment (or not) with Resource Management Act Reforms

Council wishes to express significant concerns with the apparent lack of thought being given as to how the NPS-IB will integrate with the Resource Management Act reforms that are currently underway. The implementation plan is silent on how the NPS-IB will be integrated into the RMA reforms, and what this will mean for councils trying to meet their statutory requirements (either under the RMA or future resource management system). This raises concerns for Council that policy and legislative change is being driven by the Government and government agencies in silos, without clear thought being provided as to how the policy and legislatives are integrated across the reforms currently being undertaken.

1.3 SUPPLEMENTARY ITEM TO REMITS FOR CONSIDERATION AT LGNZ 2022 AGM

File Number: **COU1-1411**

Author: **Caitlyn Dine, Governance Lead**

Authoriser: **Doug Tate, Chief Executive**

Attachments: **1. 2022 LGNZ AGM Remits to include remit 6 ⇩**

PURPOSE

To receive and consider a late remit from Local Government New Zealand (LGNZ).

RECOMMENDATION

Remit 6 Policy to poll LGNZ membership on significant issues
That LGNZ adopt a policy to poll the LGNZ membership on any significant issue affecting local government in Aotearoa, prior to making that decision. LGNZ should develop a policy in conjunction with the membership that sets out the threshold for polling the membership. In the interim, the decision about the threshold for polling rests with National Council.

Background

This report is a late supplementary item to Report 6.6 Remits for consideration at LGNZ 2022 AGM of the 7 July Strategy and Wellbeing Committee Meeting Remits for Consideration at LGNZ 2022 AGM. This meeting of the Committee, is the only opportunity for Council to ratify its support for the remit ahead of the Annual General Meeting.

The paper now includes an additional remit from New Plymouth District Council requesting that LGNZ adopts a policy to poll its members on any significant issue affecting local government in Aotearoa, prior to making that decision.

Who's putting local issues on the national agenda?

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2022 Annual General Meeting

Remits

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1 Central government funding for public transport

Remit: That LGNZ:

- Calls on central government to fully and permanently fund free public transport for students, community service card holders, under 25s, and total mobility card holders and their support people.
- Joins the Aotearoa Collective for Public Transport Equity (ACPTE) in support of the Free Fares campaign.

Proposed by: Porirua City Council

Supported by: Metro Sector

Background information and research

1. Nature of the issue

At present, an inequitable, car-dominated transport system constrains mobility and limits opportunity for thousands of people. Transport is the second-largest source (21%) of domestic carbon emissions in Aotearoa – and 70% of these emissions come from cars, SUVs, utes, vans and light trucks.

The Aotearoa Collective for Public Transport Equity (ACPTE) are a vast collection of community organisations from across Aotearoa, joining together to advocate for more equitable public transport. The ACPTE are now asking for councils across the country to join their Free Fares campaign.

ACPTE's Free Fares campaign is asking for central government to fund free fares for public transport users, starting with low income groups and under-25s. The ACPTE believes that these groups are the right place to start because they represent a large portion of public transport users who rely on the service the most but are least likely to be able to afford it.

2. Background to its being raised

Transport is New Zealand's fastest growing source of greenhouse gas emissions, having doubled since 1990. Targeting transport is a key way to mitigate our fastest growing source of emissions. Porirua City Council's view is that we need to provide more sustainable transport options and enable people to transition from private vehicles to public transport.

The proposed remit suggests we can't meet our climate change targets without reducing how much we drive – not even by replacing petrol and diesel cars with EVs. Both in Aotearoa and overseas there are examples of free public transport incentivising mode shift away from private vehicle use. Free fares enable people to switch to public transport, which produces far less emissions per kilometre than private cars.

With housing costs and other expenses rising, many Community Service Card holders, tertiary students, under 25s and total mobility card holders find that a regular $3 bus ticket is out of reach – and that's at the very time that we need to promote connection to combat loneliness and poor mental health. The high cost of public transport also leaves too many disconnected from family, friends and activities that bring us joy, leading to isolation and loneliness. The proposed remit suggests free fares would allow disadvantaged communities to better access services and seek education and employment.

To ensure transport equity, Porirua City Council suggests it is imperative we prioritise those who struggle the most to afford and access transport. All sectors of society are affected when the cost of fares prevent people from travelling. Businesses miss out on customers, community groups lose participants and volunteers, and tourist spots miss out on visitors. Free fares will allow more people to make these trips, connecting communities so we are all better off.

The ACPTE started in 2021 calling for free public transport for students and community card holders. A coalition of climate action groups, student organisations, churches, unions and political youth wings joined together in asking central government and the Greater Wellington Regional Council to fund a trial for free public transport for these two target groups in the Greater Wellington region.

After submitting to GWRC, the ACPTE decided that leading up to the Emissions Reduction Plan (ERP) consultation, the campaign should go national. Over the months leading up to the ERP consultation, the ACPTE connected with groups across Aotearoa to advocate for free fares. The campaign also shifted to include under 25s, with the aim of normalising public transport as the main form of transport for the next generation.

During this time, the ACPTE also reached out to councils inviting them to join in the advocacy effort, and several councils passed motions supporting free fares.

This campaign is specifically requesting that free fares are funded by central government. Signing onto this campaign would have no impact on councils' finances and would add no extra burden on rates.

3. New or confirming existing policy

This is new policy.

4. How the issue relates to objectives in the current Work Programme

This remit is broadly consistent with existing LGNZ work, particularly on climate change mitigation and the Future for Local Government Review, but has a more specific focus.

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LGNZ is committed to working alongside central government and iwi to address social issues in our communities, including inequity between social groups.

5. What work or action on the issue has been done on it, and the outcome

The Government began a trial of half-price public transport fares from 1 April 2022. This three-month trial was extended by two months, and made permanent for community services cardholders, as part of the Government's Budget 2022 announcements. (Note that this decision is to provide half-price fares only to community service card holders, and not free fares which this remit and the ACPTE are advocating for).

While LGNZ has made statements in press releases about the Government's half-price public transport fares trial and its decisions around continuing this trial as part of Budget 2022 and ERP announcements, no formal work has been undertaken by LGNZ on this issue.

ACPTE has undertaken work on this issue, detailed in section 2 above. In addition to the work noted above, ACPTE has compiled research from within Aotearoa and abroad about the impact free fares could have for climate and equity and submitted their findings to the ERP consultation, and started a petition which received over 13,000 signatures and was handed to the Minister of Transport in March 2022.

6. Any existing relevant legislation, policy or practice

- Central government's public transport half-price fares trial extended for two months (total 5 months), and made permanent for community services cardholders, as part of Budget 2022 announcements
- NZ Transport Agency Total Mobility scheme: policy guide for local authorities 2017
- Ministry of Transport SuperGold Card public transport funding
- Aotearoa Collective for Public Transport Equity (ACPTE) Free Fares NZ
- Government Policy Statement on Land Transport, 2021/22 – 30/31 including outcomes addressing "Inclusive Access" and "Resilience and security"
- The Zero Carbon Act 2019 and Emissions budgets and the emissions reduction plan

7. Outcome of any prior discussion at a Zone or Sector meeting

This proposed remit was endorsed by the Metro Sector at its meeting on 13 May 2022.

8. Suggested course of action

That LGNZ calls on central government to fully and permanently fund free public transport for students, community service card holders, under 25s, and total mobility card holders and their support people.

That LGNZ joins the Aotearoa Collective for Public Transport Equity (ACPTE) in support of the Free Fares campaign.

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2 Review of Government transport funding

Remit: That LGNZ call for an independent review into the way in which government, through Waka Kotahi, fund transport investments in Aotearoa. This includes funding of new developments and maintenance programmes.

Proposed by: New Plymouth District Council

Supported by: Rangitīkei District Council, Hauraki District Council, South Taranaki District Council, Western Bay of Plenty District Council, Stratford District Council and Hamilton City Council

Background information and research

1. Nature of the issue

A key part of the advocacy role of LGNZ includes being involved in discussions with central government on significant issues affecting local government. This is a critical role that is at the core of the work and purpose of LGNZ.

This remit asks that LGNZ work with government to ensure that an independent review into the funding model of Waka Kotahi is undertaken. The current funding model does not fully recognise the costs of maintenance of roads and related infrastructure and does not provide certainty to councils in setting their own budgets. This appears to be related to funding being heavily reliant on the annual budget of the government of the day and income that varies depending on many factors.

Such a review should consider how long-term projects such as roading should not be so reliant on annual fluctuations and more should be funded through long-term debt such as with local government major infrastructure.

2. Background to its being raised

The Government Policy Statement on land transport (GPS) states that "transport investments have long lead times, high costs and leave long legacies. Therefore transport planning and investments need to be guided by a long-term strategic approach, with a clear understanding of the outcomes that government is seeking to achieve".

Over $4 billion of New Zealanders' money is spent through the national land transport fund each year, which is supplemented by co-investment from local government and additional funding and financing.

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The GPS recognises that as the largest co-funder of National Land Transport Programme (NLTP) projects, local government has an important role in building strong, evidence-based projects and programmes for investment. This shows the appropriateness of LGNZ requesting a review is undertaken.

The Ministry of Transport and Waka Kotahi already look to other financing tools for larger intergenerational projects over $100 million. The review should consider if this goes far enough and options for fixing the massive hole in existing budgets – such as the $400 million one recently highlighted in Auckland for road maintenance and public transport projects.

The review should also consider the consistency of government actions across various infrastructure. The Three Waters Reform programme creates new entities to gain "a greater ability to borrow to fund long-term infrastructure" and aims "to protect consumer interests and drive efficient investment and performance". Government recognises that Three waters requires long-term investment, but this review is needed to consider that view in relation to transport infrastructure.

3. New or confirming existing policy

Transport is one of LGNZ's five key policy priorities. However, LGNZ is not currently actively advocating for a review of transport funding. This is therefore a new policy issue.

4. How the issue relates to objectives in the current Work Programme

Transport is, and always has been, a very critical issue for local government. There is a heavy reliance on uncertain Waka Kotahi funding and the need to advocate for investment in our regions. One of the LGNZ priorities is "Ensuring local voice is heard on the important issues – three waters, resource management, housing, transport, climate change and the future for local government".

This remit meets the existing aims of LGNZ to represent the national interest of councils in Aotearoa, to 'decode policy' and to "help local government run better through development, support and advocacy". By working with government to ensure an independent review of transport funding is undertaken, LGNZ would help fulfil their Whakamana/Advocate role.

As transport is also one of LGNZ's five key policy priorities, and the ongoing funding of the local roading network is an issue that has emerged in ongoing conversations with the sector and in Future for Local Government workshops, advocating for an independent review of the funding system may speed up the pace of any review.

5. What work or action on the issue has been done on it, and the outcome

The Ministry of Transport regularly reviews its Government Policy Statement on Transport (typically every three years). This however would not meet the intent of the remit that there be an independent review of the broader system of funding of transport investment.

Based on recent engagement with the Ministry of Transport, LGNZ is aware that the Ministry has begun scoping work on what the future funding tools and requirements of the transport system should be. As such, this remit may provide value in demonstrating to the Government

how important this issue is to local government, and it may also signal some of the issues that should be in included in scope of that review (including the benefit of the review being independent). As noted above, the remit may need to be updated depending on whether a Ministry of Transport-led review into how the transport system is funded is announced prior to the AGM. We do not have any indication of when such a review will be announced (if indeed it does proceed).

6. Any existing relevant legislation, policy or practice

The Land Transport Management Act 2003, Government Policy Statement on land transport and the National Land Transport Programme outline Government's position.

7. Outcome of any prior discussion at a Zone or Sector meeting

The proposed remit is supported by Rangitīkei District Council, Hauraki District Council, South Taranaki District Council, Western Bay of Plenty District Council, Stratford District Council and Hamilton City Council.

8. Suggested course of action envisaged

That LGNZ work with the Government to ensure a review of land transport funding in New Zealand is undertaken. This should include looking at the funding of new transport infrastructure and maintenance and how best to fund these in a realistic, efficient and equitable manner alongside local government.

An independent review may not be possible given decisions around this work programme for the Government may be made (and possibly announced) prior to the AGM in July – though we do not have any indication of when the Government will make announcements about a possible review, or if indeed it will do that. However, support for this remit would provide LGNZ with the ability to demonstrate the importance of such a review to local government, and influence the particular issues that local government thinks should be within the scope of any review – including funding of new developments and maintenance programmes.

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3 Illegal street racing

Remit: That Local Government New Zealand (LGNZ) implement a nation-wide working group of subject matter experts with the objective of formulating an action plan to effectively enforce the Land Transport Act 1998 and work with police to tackle illegal street racing and the antisocial behaviour associated with it.

Proposed by: Hutt City Council

Supported by: Upper Hutt City Council, Masterton District Council, Carterton District Council, Tauranga City Council, Hamilton City Council and Porirua City Council

Background information and research

1. Nature of the issue

Excessive noise from vehicles and other intimidating behaviour (such as convoys blocking the road and vehicles driving at high speeds) has been a frequent complaint from residents towards their local councils. Various attempts to curb this behaviour have had some success, while some measures have simply moved the problematic behaviour to another geographical location.

Councils across the nation have implemented various measures to limit dangerous vehicle use, such as speed cushions, concrete speed bumps, and visual distractions. With the additional cost of maintenance and road signs, these can be a significant cost to councils with only a limited impact on the problem.

Due to the illegal street racers often being in a network, they can communicate to avoid detection by police and move across several councils' territories in one night. This can pose an issue if multiple councils do not have consistent bylaws in their respective areas.

2. Background to its being raised

New Zealand laws deterring illegal street racing (occasionally referred to as 'boy racing') include the Land Transport Act (1998) and the Land Transport (Unauthorised Street & Drag Racing Amendment Act) (2003). Several other councils around New Zealand have chosen to include illegal street racing in their Public Places Bylaw, noting that intimidating behaviour or excessive noise from vehicles is prohibited. New Plymouth District Council and Waipā District Council both have proposed bylaws (not yet in force) specifically about illegal street racing. Christchurch City Council has a "Cruising and Prohibited Times on Roads Bylaw 2014" which is currently under

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review. It is unclear how successful these bylaws have been, as there has been no evaluation material available to view.
Based on reports from other locations, the issue of vehicle noise, speed, intimidation, and damage is widespread across the country. Despite laws from central government and supplementary bylaws from local councils, the issue continues to persist. This does not support the argument that these laws have been effective.

Discussions with police and council officers have revealed the challenges of enforcing the law. Under-resourcing has not met the demand, as there are incidents were upwards of 100 illegal street racers converge in a single area with only one patrol car available.

Complaints about illegal street racers have been received by the Hutt City Council Deputy Mayor and council officers in the transport division. Noise is a prominent theme in these complaints when the illegal street racers are in close proximity to residences, along with tyre tread marks and oil on the road. Stolen road signs and other damage to property (both public and private) create further safety issues, along with alcohol use and some assaults to police officers or members of the public when attempting to communicate with the illegal street racers.

3. New or confirming existing policy

The issue is not currently covered by existing LGNZ policy.

4. How the issue relates to objectives in the current Work Programme

The issue aligns with LGNZ's Whakahono//Connect leadership pillar given the request from Hutt City Council to bring together the different actors involved with local government (including NZ Police, Waka Kotahi and the Ministry of Social Development) to address illegal street racing.

5. What work or action on the issue has been done on it, and the outcome

There does not appear to be any collective effort or plan underway to nationally address street racing. However, it does seem that there are a few localised plans, initiatives (including bylaws, speed cushions etc) or teams being stood up to address this issue (for example, in the Waikato, New Plymouth and Hutt City).

Hutt City Council's view is that these initiatives have had a limited impact on the problem, which is often moved elsewhere rather than stopping gatherings altogether.

6. Any existing relevant legislation, policy or practice

Land Transport Act (1998), and Land Transport (Unauthorised Street and Drag Racing) Amendment Act (2003).

7. Outcome of any prior discussion at a Zone or Sector meeting

The proposed remit is supported by Upper Hutt City Council, Masterton District Council, Carterton District Council, Tauranga City Council, Hamilton City Council and Porirua City Council.

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8. Suggested course of action envisaged

The remit recommends LGNZ establishes a nation-wide working group of subject matter experts to develop a plan of action to address the issue and enforcement of the law. It suggests it will be useful to have input from police, community patrol officers, policy makers, and transport analysts in formulating the group.

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4 Bylaw infringements

Remit: That LGNZ lobby Government to implement an infringement notice regime for general bylaws.

Proposed by: Auckland Council

Supported by: Auckland Zone

Background information and research

1. Nature of the issue

Section 259 of the Local Government Act 2002 (LGA) provides for the making of regulations and amongst other matters, prescribing breaches of bylaws that are infringement offences under the Act. The power has been seldom used to date.

Between working with and "educating" people and taking a prosecution, there are no enforcement options available making it extremely difficult to achieve compliance especially in an environment of increasing disrespect for authority and aggression.

Working with people or educating them can be time consuming but is effective especially where the breaches are unintentional. However, in relation to intentional breaches of bylaws, in the absence of an infringement regime, after working with and educating people the next step is prosecution. Prosecution is expensive and time consuming. Also, it is often out of proportion with the breach that has occurred. Even following a successful prosecution, the penalties available to courts are low and provide minimal deterrence.

The obstacle in passing regulations allowing for infringement fee regulations has been the need to tailor those regulations to each instance of an infringement offence bylaw by bylaw. Therefore, a two-step approach is required: firstly, amending the legislation to enable regulations to be made nationwide across different bylaw types and then relevant regulations being passed.

By developing a more comprehensive infringement regime, councils in New Zealand will be better able to take proportionate and timely steps to help ensure compliance with their bylaws. In doing this, confidence of communities in the work of local government will be enhanced.

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2. Background to its being raised

Discussion around the need for an infringement regime for local government bylaws is not new.

Provision for the making of regulations was included in section 259 of the LGA. Part 9, Subpart 3 "Infringement Offences" of the LGA provides a mechanism for imposing and collecting infringement fees. Apart from regulations establishing infringement fees for some navigational bylaws, the provisions have not been used.

This issue was well-canvassed in the Productivity Commission's 2013 Report, *"Towards better Local Government Regulation*." The Productivity Commission's report includes the following comment:

Much of a local authority's regulatory functions are authorised by its bylaws. The Act under which bylaws are made may authorise the local authority to enforce certain provisions in bylaws by the use of infringement offence notices. If not, bylaws must be enforced under the Summary Proceedings Act 1957…I submit that the enforcement of local authorities' regulatory functions would be significantly more effective and efficient if the use of infringement offence provisions is more widely available than at present." (Richard Fisk, sub.19, p.1).

In the Auckland Region, the challenges in enforcing bylaws were brought into stark relief over summer 2021/2022 with an increased number of complaints about people camping on beaches and in reserves (not freedom camping) and an expectation from members of the public and elected members that steps would be taken to enforce the bylaws.

With the changing attitudes and behaviours of our communities arising in part through people's experience of the Covid-19 response, Auckland Council's position is that now is the right time to revisit the development of a more comprehensive infringement regime for local government.

3. New or confirming existing policy

This remit would confirm and enhance existing policy work that LGNZ has underway.

4. How the issue relates to objectives in the current Work Programme

This remit connects indirectly to LGNZ's strategy and Work Programme to the extent that the lack of being able to enforce local bylaws frustrates local citizens and undermines public perceptions of local government's effectiveness.

5. What work or action on the issue has been done on it, and the outcome

As noted above, the Productivity Commission considered bylaws and an infringement notice regime in its 2013 Report, *"Towards better Local Government Regulation*." Findings and recommendations set out in that report have not been acted on to date, but remain relevant, specifically:

- F4.8 – There are indications of a low level of prioritisation of monitoring and enforcement resources based on risks. Constraints on the use of infringement notices – combined with the low level of fines where infringement notices can be used – can also inhibit councils' capacity to encourage compliance with regulation.

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- R10.3 – Agencies responsible for regulations that local government enforces should work with Local Government New Zealand to identify regulations that could usefully be supported by infringement notices and penalty levels that need to be increased.
- R10.4 – Section 259 of the Local Government 2002 – relating to the empowerment of infringement notices – should be amended to enable regulations to be made for infringement notices for similar kinds of bylaws across local authorities, rather than on a council-specific and bylaw-specific basis.

LGNZ has highlighted this issue in a number of briefing papers and advice to various ministers and central government officials since the early 2000s. Although the issue has been of concern to LGNZ and councils for nearly 20 years, it has never been the subject of an AGM remit.

Parliament's Regulations Review Committee wrote to LGNZ in late 2021 advising that it was considering a review of the bylaw provisions of the LGA. LGNZ was invited to provide advice on the effectiveness of local authority bylaws and the enforcement of them. LGNZ recently appeared before the Committee to speak to its submission.

We are still awaiting a decision from the Committee on whether or not it will undertake a review of the bylaw provisions of the LGA, and if so, what the scope of that review will be. Although the Committee did ask for specific advice on the infringement regime, it also sought advice on other matters including the use of model bylaws and the expansion of the model bylaws used in the Freedom Camping Act 2011.

6. Any existing relevant legislation, policy or practice

- Local Government Act 2002
- Productivity Commission's 2013 Report, *"Towards better Local Government Regulation."*

7. Outcome of any prior discussion at a Zone or Sector meeting

This proposed remit was supported by the Auckland Zone.

8. Suggested course of action envisaged

Auckland Council has not provided any detail as to how it suggests LGNZ progresses the proposed remit.

While the inquiry that the Regulations Review Committee has underway (and in which LGNZ has been engaged) is a significant step forward, there is no guarantee that the Committee will agree with LGNZ's submission, or, should the Committee agree, that work to review the bylaw provisions of the LGA would be supported by either this Government or a future one.

To gain traction, and to ensure that any review of the bylaw provisions addresses the issues that local government is most concerned with, this remit (along with the national publicity that tends to accompany successful remits) might be very helpful at this time.

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5 Density and proximity of vaping retailers

Remit: That LGNZ requests the Government to:

- Restrict the sale of vaping products to R18 specialist vape stores.
- Develop proximity limits to prevent the clustering of vaping product retailers and protect young people.

Proposed by: Kaipara District Council

Supported by: Zone 1

Background information and research

1. Nature of the issue

Vaping products are widely available from generic retailers (e.g., dairies, service stations) and specialist vape retailers. To date, New Zealand has 713 specialist vape stores; a British American vape brand is available from 2000 retail outlets throughout Aotearoa. Vaping products are also available via several online stores (both NZ-based and international).

Dargaville's main street, Victoria Street, has 13 vape retailers: ten General Vape Retailers and three Specialist Vape Retailers, all within a 1km length. The three licensed Specialist Vape Retailers are located within 150m of each other.

Youth vaping has risen sharply over recent years; among 14 to 15 year olds, daily vaping rose from 1.8% in 2018 to 9.6% in 2021; among 14-15 year old Rangatahi Māori, daily vaping rose from 5.9% in 2019 to 19.1% in 2021. Widespread product availability normalises vaping and makes experimentation easier.

Many towns and regions around New Zealand also need to address the proliferation of vaping outlets and rising vaping among Rangatahi.

2. Background to its being raised

The widespread sale of vaping occurred in 2018, when the Ministry of Health lost a case taken against Philip Morris alleging their "HEETS" products breached the Smokefree Environments Act 1990. Until the Smokefree Environments and Regulated Products Amendment Act was passed in 2020, vaping products were largely unregulated and vaping manufacturers

advertised their brands using youth-oriented promotions. Even post-legislation, retailers with little or no knowledge of vaping remain able to sell vaping products.

Surveys of young people, such as the Youth19 survey and the Snapshot Year 10 survey conducted by ASH revealed many adolescents who had never smoked had begun vaping. A 2021 report into youth vaping found that 14.6% of those surveyed reported smoking one or more traditional cigarettes in the last 7 days and 26.6% reported that they had vaped (e-cigarettes) in the past 7 days. Almost all those (98%) who had smoked a traditional cigarette in the last week had also vaped in the last week. However, a significant portion (46.2%) of those who had vaped in the last week had not smoked a cigarette. These data provide important evidence that youth vaping is rising rapidly and reveal that many young people who vape have never smoked.

The Smokefree Environments and Regulated Products Amendment Act 2020 extended many of the existing restrictions governing smoked tobacco products to vaping products. This legislation allows any business to sell vaping products as long as they follow the regulations for General Vape Retailers or apply to become a Specialist Vape Retailers. However, the Vaping Regulatory Authority does not consider retailer density or proximity to facilities such as schools when assessing applications.

The Government's Smokefree 2025 Action Plan will introduce a provision requiring general retailers selling vaping products to advise the Director-General of Health that they are doing so. This provision aims to provide information on the number and type of retailers selling vaping products.

We recognise that people who smoke and who have not been able to quit using existing treatments will benefit if they make a complete transition to vaping products and stop smoking. However, survey data showing rising vaping prevalence among young people suggests existing policy does not provide an appropriate balance between the needs of people who smoke and the rights of young people who do not, and who deserve protection from products that are designed to target them.

Limiting the retail availability of vaping products to specialist stores will not prevent people who smoke from accessing these products and instead will increase the likelihood they receive smoking to vaping transition advice that improves the chances they will stop smoking. Furthermore, people who smoke will continue to be able to access vapes through stop smoking services.

Kaipara District Council elected members have been receiving questions and concerns from the local community about the density and proximity of vape retailers in Dargaville.

While we support the supply of vapes to people wanting to use these products to stop smoking, it is of the utmost importance that we also protect our community, particularly our Rangatahi and other whānau who would not usually vape, from using these addictive products.

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3. New or confirming existing policy

This is a new policy.

4. How the issue relates to objectives in the current Work Programme

This remit aligns with LGNZ's pillar Whakauru // Include – to ensure that every New Zealander can participate, thrive and be represented by local government.

It could be argued that restricting the density and proximity of vaping retailers shows some alignment with enhancing community safety, public health and promoting social wellbeing. However, the remit does not show strong alignment with LGNZ's existing policy priorities or engagement in major ongoing local government reform programmes. Further discussion is needed to determine whether LGNZ's membership agree it is relevant to local government as a whole.

5. What work or action on the issue has been done on it, and the outcome

A petition was received by Kaipara District Council regarding the density and proximity of vape retailers. The petition was accepted and responded to. Given this issue sits outside Kaipara District Council's control and existing policy frameworks, a remit was recommended as the appropriate action to take. Councillor Karen Joyce-Paki is the sponsor of the remit and is working closely with Smokefree NZ, Cancer Society and local Māori Health Provider, Te Ha Oranga.

The Smokefree Coordinator for Northland, Bridgette Rowse, has been providing support and is working with the Far North District Council (FNDC) policy team to review the FNDC Smokefree Policy, which currently covers smokefree parks, playgrounds and sports grounds. She has also worked with Whāngarei District Council and Kaipara District Council to review and align our smokefree policies to create more smokefree outdoor public spaces as well as making all smokefree outdoor public spaces vape-free.

6. Any existing relevant legislation, policy or practice

The relevant legislation is the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020. The Act aims to balance between ensuring vaping products are available to smokers who want to switch to a less harmful alternative, while ensuring these products aren't marketed or sold to young people. New regulations are in the process of being implemented from November 2020 until January 2023. While these regulations cover factors such as how vape retailers can advertise, who they can sell their products to and where vaping is allowed, there are no regulations around proximity limits to prevent the clustering of vaping product retailers as the remit requests.

7. Outcome of any prior discussion at a Zone or Sector meeting

The remit was supported at the most recent Zone 1 meeting by all members present.

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8. Suggested course of action envisaged

This remit suggests that LGNZ requests the Government to:

- Restrict the sale of vaping products to R18 specialist vape stores.
- Develop proximity limits to prevent the clustering of vaping product retailers and protect young people.

We understand that an Amendment Bill is expected to be introduced in 2022 (according to the Government's Smokefree Action Plan). Kaipara District Council has suggested that one way to progress this remit would be to advocate for the Amendment Bill provision which only allows authorised retailers to sell smoked tobacco products to be extended to restrict the number who can sell vape products.

Progressing this remit is likely to require LGNZ working with officials from the Ministry of Health to advocate for changes to regulations and the upcoming Amendment Bill.

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6 Polling LGNZ members

Remit: That LGNZ adopt a policy to poll the LGNZ membership on any significant issue affecting local government in Aotearoa, prior to making that decision. LGNZ should develop a policy in conjunction with the membership that sets out the threshold for polling the membership. In the interim, the decision about the threshold for polling rests with National Council.

Proposed by: New Plymouth District Council

Supported by: Taupō District Council, South Taranaki District Council, Thames-Coromandel District Council, Stratford District Council, Taranaki Regional Council, Central Otago District Council.

Background information and research

1. Nature of the issue

A key part of the advocacy role of LGNZ includes being involved in discussions with central government on significant issues affecting local government. This is a critical role that is at the core of the work and purpose of LGNZ.

New Plymouth District Council's (NPDC) view is that when the issue of the day is divisive, very significant or controversial, it is difficult for one organisation to fully gauge and express the views of its members. This remit asks for LGNZ to develop a policy that sets out t when LGNZ will poll its membership, on significant issues, including when entering into formal agreements with the Crown on significant or controversial issues. The policy will outline those issues on which LGNZ may poll its membership, which may include responsibilities being given or taken away from local authorities and/or significant legislative changes. They will generally be of widespread public and media interest and will have strongly varied views across the country. NPDC's view is that polls should not limit the ability of LGNZ to achieve their objectives relating to working with central government and advocating for local government. In the interim, while that policy is being developed, the decision about the level of significance sits with National Council.

NPDC's view is that the proposed remit is greatly supported by the existing LGNZ constitution and strategy and could be met by developing a policy clearly outlining the issues on which the membership will be polled, prior to decisions being made.

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The proposed remit recognises that councils will regularly have varied opinions on issues and that opportunities exist for councils to present their own opinions alongside LGNZ on any topic.

2. Background to its being raised

Local government is made up of many different councils with often very different opinions on various issues that arise. There have been many examples where not all agree relating to bills before parliament, government discussion papers and others such as the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill and the Shop Trading Hours' Amendment Bill.

In July 2021, the President and Vice-President of LGNZ signed a formal heads of agreement with central government for "Partnering commitment to support three waters service delivery reform", and have also released a joint position statement on three waters reform. NPDC's position is that this document clearly shows LGNZ's support for the reform and a commitment to work with the Government to support "a smooth transition and successful implementation of the Three Waters Reform Programme".

However, according to media, the reform has a "massive majority of the 67 mayors pushing back against this plan" and that "the vast majority of councils are fuming". NPDC's position is that entering into such agreements with central government without the support of members, appears to be contrary to the "objects of LGNZ" in its constitution (summarised here):

- to promote the national interests of local government through the promotion of LGNZ's vision;
- to advocate on matters affecting the national interests of local government and the communities that it represents;
- to promote and facilitate regular dialogue with Government on matters of national interest to local government with a view to enhancing and ensuring a long-term commitment to partnership between central and local government in New Zealand;
- to provide full, accurate and timely information to members on matters affecting local government and LGNZ; and
- to research, survey, and investigate those matters in which LGNZ has an interest or a responsibility on behalf of its members

NPDC's position is that developing a policy that clearly sets out when LGNZ will poll its members on different issues would strongly contribute to LGNZ's advocacy, promotion and partnership roles and the need to "research, survey and investigate those matters". It would also greatly contribute to the LGNZ Strategy which states that LGNZ will:

- Ensure that local democracy – and local voice – is at the front and centre of our work.
- Leverage the shared interests of Aotearoa and translate local democracy's contribution to communities in a meaningful and powerful way through the different strata of New Zealand society and leadership.
- Advocate for councils and be a champion for their communities' needs.

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- Empower councils across New Zealand who know their communities best to support them to thrive – culturally, economically, socially and environmentally.
- Support and advocate for councils, ensuring the needs and priorities of their communities and residents are heard loud and clear at the highest levels of central government.
- Focus on being future-fit, proactive and inclusive in all that we do – from policy development and advocacy, to supporting capability building through advice.

3. New or confirming existing policy

The remit proposes a new approach to the way in which LGNZ engages with its membership.

NPDC has stated that this remit would greatly contribute to the achievement of existing strategy and result in a new policy outlining the process LGNZ will follow when determining how to act regarding a significant or divisive issue and an amendment to the constitution.

Its view is that any such policy should consider how such a process will still enable LGNZ to fulfil its purpose and objectives while ensuring an empowered and engaged membership. The purpose of any policy is not to stop LGNZ from entering into a partnership with central government to discuss key issues. The intent is to provide LGNZ an opportunity to fully consider the views of its members before formally entering into agreements with central government (or making any other significant decisions set out in the policy that will be developed).

4. How the issue relates to objectives in the current Work Programme

The proposed remit suggests that enactment of this remit would allow the National Council to be assured of its mandate before entering into agreements with central government and will assure members as to their views being both canvassed and heard.

5. What work or action on the issue has been done on it, and the outcome

LGNZ engages in a wide range of ways with its membership, on a wide range of issues. However, polling is not an engagement approach that LGNZ is using currently.

6. Any existing relevant legislation, policy or practice

NPDC's position is that the LGNZ Constitution and strategy include excellent objectives that support the need for this remit and to develop a policy that sets out when LGNZ will poll members in the future where appropriate. It considers the LGNZ "Designing decision-making structures: A guide for councils" also support this and begins with the following:

Decision-making structures matter. The ability of a local authority to meet the needs of its community and achieve the objectives set by its governing body is strongly influenced by the nature of its governance system which has a direct effect on elected members' workload, the opportunities for citizens to engage and participate, responsiveness to local concerns and the quality of governance oversight and strategic thinking. A poorly designed system will frustrate elected members, alienate citizens and diminish oversight and scrutiny.

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This remit requests that LGNZ follow their own advice and consider how to best provide opportunities for its members to engage and participate and to then be responsive to their concerns. The policy may address matters such as voting rules, and set out a process for National Council to determine which issues may be polled on.

7. Outcome of any prior discussion at a Zone or Sector meeting

This proposed remit was endorsed by Taupō District Council, South Taranaki District Council, Thames-Coromandel District Council, Stratford District Council, Taranaki Regional Council , Central Otago District Council.

8. Suggested course of action

NPDC's suggested course of action is that LGNZ make a commitment to engage fully with their members on issues of significance that may be divisive or controversial and may result in a formal delegation and/or agreement with central government. It is recommended that this is through a poll process, outlined in a policy, and in-line with the current constitution and voting rules. This should not limit the ability of LGNZ to do their role and achieve their objectives.

While the policy for polling the LGNZ membership is developed, the decision about the level of significance should rest with National Council.