Whakatāne District Council Submission

Water Services Entity Amendment Bill (June 2023)

5 July 2023

1. Introduction

Whakatāne District Council (WDC) is submitting on the Water Services Amendment Bill (June 2023) This bill gives effect to cabinet decisions on the water services reforms made in April and May 2023. This submission builds upon our previous feedback on this reform package throughout 2021, 2022 and 2023.

2. Background

WDC strongly supports the **intent** of the Three Waters Reform ensuring all New Zealanders can enjoy safe, affordable and sustainable drinking water, wastewater and stormwater services – now and in the future.

Notwithstanding this, Council identified strong concerns for the Whakatāne District when initial reform details were made available in September 2021. Councillors, Council staff, residents and iwi leaders inputs were collated to highlight our key concerns. Below is a snapshot of these high level concerns, updated with current information as at June 2023.

Initial Concern (Sept 21)	Current status of concern (Jun 23)
Wider process of reforms	WDC's main concern in relation to the wider process of reform, was to gain better understanding of how the various reforms (Three Waters, RMA and Future for Local Government) intersected. A Planning Technical Working Group (PTWG) was established in 2022 to guide policy development between the new water service entities and the wider planning system. **Despite the establishment of this Group, there is still no clarity on how these reforms will align.** This amendment bill (June 2023) provides no further clarity on this concern.
Governance	In September 2021, WDC raised concerns around the structure, size, ownership and governance model of the proposed Entity B. Within the amendment bill (June 2023) the following changes have been identified: • Increased number of entities from four to 10 (replicates regional boundaries) • Confirmation that every territorial authority will be represented on the regional representative group by Mayor or delegate, with equal mana whenua representation • Community priority statements can be presented to the regional representative groups by persons with an interest in specific water bodies

Initial Concern (Sept 21)	Current status of concern (Jun 23)
	As a result of these changes, the concern has largely been addressed. Some concerns still remain around: - The efficiency of this group (i.e. how much it will cost to maintain this complex governance structure) - There are a significant amount of inputs that the Regional Representative Group (RRG) have to consider in decision making. Within this bill there is an additional input 'community priority statements'. The ability for the RRG to make effective decisions and 'trade offs' with conflicting needs / requirements remain a challenge.
Service and cost to our communities	The need for significant investment into 3 waters still remain, whether the actual amount is $120bn - $180bn is uncertain, as this number has never been fully justified. The rationale for moving towards a 'four entity' model was always premised on a need for scale in order to deliver efficiencies. With the move towards a 10 entity model there is concern that the efficiency savings will not be achieved. Within the Amendment bill (June 2023) it has stated there will be provision for: - Locally led voluntary mergers, where entities can merge to deliver increased savings / improved service - Entity finance arrangements put in place, including a Water Services Funding Agency - Shared service arrangements, with ability for a Minister to direct entities where collaboration is required This amendment bill (June 2023) provides no further clarity on this concern, this still remains a significant concern for WDC. Noting : voluntary mergers provides an opportunity to increase efficiency through scale. To this end, it's important that systems, structures and process are designed to allow for mergers to happen without significant integration difficulties.
Private water supplies	WDC raised concern that those residents on private water supplies would have a significant financial burden placed on them as a result of the increase in standards, including the requirement to register as a drinking water supplier– where drinking water is being supplied to more than one standalone domestic dwelling. WDC's concern (as raised) has largely been addressed through better understanding of the requirements through Taumata Arowai. This is no longer a key concern for WDC.

Initial Concern (Sept 21)	Current status of concern (Jun 23)
	Noting : As recommended by the Rural Supplies Technical Working Group Taumata Arowai and DIA need to provide clear communications for rural water supply providers as they progress to ensure there are no surprises.
Impacts on whānau, hapū, iwi	As part of our submission in September 2021, we reached out to local Iwi leaders in the district for their feedback on the Three Waters Reform package, as outlined then. At the time concerns were raised that these reforms must not impinge on the Treaty settlement process, and a missed opportunity around how Māori rights can be better integrated with Central and Local Government statutory responsibilities. Since September 2021 there have been key recommendations incorporated into the bill, such as : • Ensuring mana whenua have input in the delivery of water services through equal representation on the Regional Representative Group • Recognising and embracing Te Mana o te Wai as a korowai that applies across the water services framework To ensure ongoing partnership with whānau, hapū, iwi, we encourage DIA and the water service entities to increase engagement and fund and resource appropriately to ensure the critical mana whenua role in delivering this reform is not impacted by a lack of funding

3. Whakatāne DC Submission points on Water Services Legislation (WSL) Bill

Whakatāne District Council has assessed various draft submissions from Taituara, Water NZ and Communities 4 Local Democracy (C4LD). The Appendices provide details around the Whakatāne DC position in regard to the comments raised from this advice and other submissions.

Within this section, Whakatāne DC details the key submission points for consideration by the select committee.

10 water services entities (Regional boundaries)	**General** • **No changes identified** - Clearly defined within the Bill - Schedule 1 (Page 37)
Staggered go Live: 1 Jul 24 - 1 Jul 26	**General** • Assuming that the order-in-council is made by the Govenor-General on advice of the Minister (standard practice). There is currently no requirement to seek any views from local authorities. At minimum due to the significant nature of this decision we would expect the Minister to seek views from local authorities on the proposed establishment date. • Any decision on establishment date to be made as soon as possible to provide more certainty to those staff involved in Three Waters. **Specific**

	• Recommend : That the Select Committee agree to amend clause 5, proposed new section 6A to require the Minister to consider (i) the views of the territorial authorities and iwi in the entity's service area (ii) the capacity of territorial authorities and the establishment boards to meet the requirements by any proposed establishment date and (iii) the need for certainty for the affected users of water services and staff affected by the transfer of water services.
Northland & Auckland WSE proceeding 1 Jul 24	**General** • **No changes identified** • Noting : This entity, as it is progressing from 1 July 2024 will be used as a benchmark, help de-risk further WSE transition.
Every TA on Regional Representative Group	**General** • **No changes identified** - Clearly defined within the Bill -Page 2 • Note : Same number of mana whenua representatives as TA's, for the Whakatāne District there will be 1 mana whenua representative which could be a challenge for the RRG.
Community priority statements	**General** • **No changes identified** - Clearly defined within the Bill - Page 10, subpart 4A
Locally led, volunary merger - entities	**General** • Schedule 2 provides clarity on who can request merger & requirements • As the Bill is currently written, mergers cannot be considered until the Entities are operational with 1 July 2026 being the deadline date for this. During this transion period (now to 1 July 2026) there will be significant effort to stand up an entity, if mergers are decided upon after entities are set up there could be significant additional cost to change. Some flexibility needs to be included within the bill to allow for local merger discussions / arrangements over the next three years (now to 1 July 2026) **Specific** • Page 4 - "before making a decision on the merger proposal, a regional representative group must engage with interested persons in its service area" ***Add new definition - interested person for clarity.*** • Schedule 2 (Page 44) - Decision on merger proposal. Clarity around consensus decision & voting if crown request. No clarity if others request a merger. **Detail needs to be added** • Recommend a new Schedule 2A should be introduced (with the current proposed Schedule 2A becoming Schedule 2B). The new Schedule 2A should provide that:

	a. A request can be made for two proposed entities (as identified in Parts 2 to 10 of Schedule 1 of Bill 4 (being proposed Schedule 2 to the WSEA 2022) to be merged where that request is made before 1 July 2024 b. The request should be made by to the Minister c. The request must be made in writing and submitted jointly by the territorial authorities for each region that requests the merger. d. The request must evidence that: i. 75% of the territorial authorities within each region wish for their proposed entity to be merged with another proposed entity and set out the reasons for this. This will keep community input at the heart of the process ii. support of mana whenua whose rohe or takiwā fall within each region e. If either or both of the regions seeking to merge have had an establishment board appointed by the date of the request for a merger, then i. the position of the establishment board in relation to the merger should be included in the request ii. the establishment board should be directed not to appoint any staff into the water services entity until the request for a merger has been considered by the Minister and a decision issued. f. The decision to approve the request is a matter for the Minister's discretion. g. Once approved, the Minister can then recommend an Order in Council to the Governor-General to amend the relevant schedule of the Act giving effect to the merger and amending the proposed Schedule 1 (introducing Schedule 2 to the WSEA 2022) to reflect the water services entities and their service areas. h. All provisions in relation to the establishment of a water services entity will apply to the merged entity. If an establishment board has been appointed to one or both transitional entities, the Minister will direct the position in relation to the establishment board of the merged entity.

	i. The new Schedule 2A would expire on 1 July 2024 in relation to requests for mergers and 31 December 2024 in relation to decisions of the Minister. Note : Other specific changes would be required to give effect to this new Schedule
Entity finance arrangements	**<u>Specific</u>** • Page 11 & 17 - "New section 173J(1) ensures that no debt of the Funding Agency is guaranteed by the Crown. New section 173J(2) provides that, if the Funding Agency enters into any loan agreement or incidental arrangement, the agreement or arrangement must include a statement that the loan or liability under the agreement or arrangement is not guaranteed by the Crown." **This is an issue between the WSEs and the funding agency. As this is a Government funding agency the debt should be guaranteed by the crown.** • Page 16 - specifies that the Crown may lend money if this is in public interest "the money is lent on commercial terms". If this funding is for general public, should not be on commercial terms - **Remove statement** • The Bill does not address the Water Services entities agreeing to mirror the funding of the water related debts of the councils, covered in previous Bills. **There will be significant negative implication on Councils ability to meet the prudence requirements in LG legislation, such as ability to maintain continuity of renewal and improvement of non-water related infrastructure if the phase of debt matching does not meet a standard for offset against related debt in the accounting standards.**
Shared service arrangements	**<u>General</u>** • Clearly specificed in Bill, subpart 2A (Page 10) • Specifies purposes whereby minister may direct • New s173C, if a <u>Funding Agency is a subsidiary of a WSE then it is subject to WSEECP and economic regulation</u> by the Commission. **Need to confirm if this is the policy intent.** **<u>Specific</u>** • New s137B The Minister may engage with the <u>Commission but the Commission cannot follow any direction or make any change to its rules or determinations without compromising its role as an independent regulator.</u> **Recommend that the Minister's direction to merge or share services is subject to the determinations and methodologies of the Commission.** • New 137D The government/Minister should not seek to exempt itself from the provisions of the Commerce Act. **Recommend : This provision should be added into the Commerce Act through an amendment to that Act.** • The **shared services outcomes need to support local community outcomes** & not focus purely on financial efficiencies to the detriment of all other outcomes. To allow for this balance, we recommend the entities' objectives

	(as set out in section 12 of the Act) are expanded to include broader local and social outcomes.
Councils fund water services until 'go Live'	**General** • Support New Clause 37 - exemptions for infrastructure strategy for 3 waters • Good clarity on LTP / Annual Plan matters • Support Clause 39 recognising existing development contributions policy for Three Waters capex projects. **Specific** • Territorial authorities within the LTP24-34 needs to include "the implications of, and any significant risks associated with, the transfer (including financial implications and risks)". DIA is leading the transition activities & the Territorial authorities will not have the details for transition **Add requirement for DIA NTU to provide input to Territorial authorities details of transition activities including significant risks.**
Details in Regulatory Impact Statement – not addressed in the Amendment Bill	**General** • RIS clearly states limitations due to the contraints on timing to pass this legislation in this parliamentary term • RIS highlights clear benefits of the 10 entity model • Criteria changed in RIS to provide greater weighting to 'local representation', as opposed to delivering economic benefits • RIS taken into account key shared services savings as part of it's assessment **Specific** • Section 34 (RIS): specifies for voluntary merger, would proceed if 75% of the Regional Representative Group agreed. **Important detail should be included in the bill & currently is not.** • Regulation / Better off funding costs : o Commerce commission $17M per annum o Taumata Arowai $15M per annum o Establishment costs increased by $1bn to $2-3Bn o BOF : First tranche funding ($500M), Note : Second Tranche funding removed o Worse off package will remain in place o **All of these costs that will be applied to the entity balance sheet should be clearly defined in the bill to provide transparency – even if the amounts per se are not specified.**

Appendix 1 : LGNZ Submission

The draft LGNZ submission was provided through to Whakatāne District Council, the format of the themes provided useful framework for commenting on the bill, see below an extract of the LGNZ draft submission and the LGNZ position. We have captured our WDC position in relation to this and highlighted key points within the LGNZ submission for ease of reading.

Theme	LGNZ Position	WDC Position
Support staggered transition date if councils involved	We support extending the timeline for establishing the WSE. Each entity's establishment date should be determined by assessing the readiness of both that entity and the relevant councils. This assessment needs to consider broad impacts rather than just focus on whether water assets and services are ready to transfer. **Councils must be involved in setting establishment dates**. These **dates should be set as soon as reasonably possible** and no later than September 2023. Councils need certainty as they begin to develop their 2024-34 Long Term Plans which, except for Northland and Auckland councils, will need to provide for water assets and services. We support the proposed arrangements for Long Term Plans, Rates, and Development Contributions and defer to the submission from Taituarā on these matters.	Strongly support
Process to establish first entity needs local government input	We are concerned **that fundamental thinking on how to establish an entity** will be **done during the establishment phase for the Northern and Auckland Water Services Entity and then applied to other entities**. This includes developing a range of core documents like a model constitution and the Development Code. However, this entity and its establishment will be very different from the other 10 entities given the dominance of one council and prior existence of a large CCO – Watercare Services Limited. Given this entity's establishment work will inevitably have an impact on the other entities, the perspectives and needs of councils (and mana whenua) from the rest of the country must feed into this inaugural process. If this doesn't happen, we are concerned that decisions made with respect to this water services entity will set expectations (and constrain what might be possible) for other WSEs with a later establishment date. There will be a **significant amount of work required before the 1 July 2024 establishment date for the Northern and Auckland entity –** especially given it is likely to develop a template and set expectations for the WSE that are to follow. We suggest that the **select committee seek advice on whether this date is feasible, given it will be set by primary legislation and cannot be altered by secondary legislation** (unlike the establishment date for other entities).	Support

Theme	LGNZ Position	WDC Position
Status of DIA oversight to be clarified	For councils not part of the Northland and Auckland entity, the **Bill effectively suspends their current 'establishment period' under the Act**. That **period will re-start when an establishment board is appointed for their WSE, and this appointment can happen no earlier than 1 July 2024**.[1] **This implies that DIA's oversight powers covering decisions made by councils relating to water services will not apply until the establishment period restarts**. However, we wonder if this suspension is unintentional. We are concerned this ambiguous situation will create uncertainty (and therefore potential risks) for council decision-making. This includes choices around the provision of water services during the first two years of a council's 2024-2034 LTP. We suggest that the bill be amended to clarify whether DIA's oversight powers continue to apply, because certainty is needed.	Support
Significant concerns with better off / no worse off funding	The Government has withdrawn the 'better off' component of the reform-related financial support package promised to councils in July 2021. This is a major source of disappointment for councils. However, the **Government has confirmed its commitment to ensuring councils will receive 'no worse off' payments** consistent with previously disclosed parameters. The 'no worse off' commitment remains **critical to ensuring the reform does not adversely impact councils' financial positions**. Previously, the **'better off' and 'no worse off' payments were mandated** by subpart 6 of Schedule 1 to the Act. The **Bill removes this subpart**. If subpart 6 is removed, the WSEs will not be obligated (or entitled) to make the 'no worse off' payments to councils. We believe the **original amount allocated under the 'no worse off' package may need to be increased** to meet the reform's actual adverse financial impacts for councils. The Minister's rationale for removing the 'better off' component of the support package was that more WSES would mean higher establishment costs and their debt burden would be too significant if the 'better off' funding was retained. Taking this logic further, **WSEs should not have to reimburse Crown expenses**. The **Crown should only be entitled to claim reimbursement from WSEs for capital expenditure incurred by the Crown that the entity will directly benefit from**. **All other reform expenses should be socialised at the national level**. This should be reflected by making a change to clause 35 of Schedule 1 to the Act. If the Crown's right to claim expenses is retained, then it should be made transparent and capped for each WSE. It should be capped at a level that will ensure that the WSE retains sufficient residual debt capacity to meet its forecast operating requirements for the five	Strongly support

[1] New clause 3(db)(ii) of Schedule 1 to the Act.

Theme	LGNZ Position	WDC Position
	years following its establishment date (while still maintaining the signalled investment grade individual long term credit rating).	
WSE shared services must support local outcomes	The Bill introduces a new shared services regime. This allows WSEs to enter shared arrangements for services – and the Minister may direct two or more entities (or their subsidiaries) to share services. We are **concerned that shared services relating to 'other procurement, and supply chain management' will have negative local impacts.**[2] Potential impacts include: • threatening local business and capability, including those in which councils have a material interest (e.g. CCOs that provide water-infrastructure-related services, where those the water services being transferred to a water services entity may be a material component of their business), and • relegating the importance of local and social outcomes (e.g., preferring local contractors so that local capability is retained or supporting the development of local business enterprises). However, we acknowledge that this may create tension with the economic and cost efficiency objectives of the new WSE, so an appropriate balance will need to be struck. To allow for this balance, we recommend the entities' objectives (as set out in section 12 of the Act) are expanded to include broader local and social outcomes.	Strongly support
Wary of the Water Services Funding Agency	We are concerned that the **proposed Water Services Funding Agency will compete with the Local Government Funding Agency**, to the detriment of councils. For example, if the presence of the new Funding Agency in the market reduces the debt capacity available to councils or increases the cost of borrowing. We think that use of a new Funding Agency should be approached with caution. It would be **preferable for each WSE to undertake direct borrowing itself** and for the Crown to provide additional support to any entity that has a materially weaker balance sheet.	Support – if government not providing a backstop / better terms than commercial
Billing arrangement's are problematic	Under the Act, **Councils may be required to collect water services charges on behalf of the WSE until 30 June 2027**. Councils have always been strongly against this. In practice, this means **councils could be regarded as administering, managing and transferring funds on behalf of the WSE**. Councils oppose being compelled to collect revenue for a service they no longer control and deliver, partly because it will exacerbate public confusion about who is accountable for water services. Councils also say this would not be feasible without significant investment in IT systems, given the complexity involved. Council financial and billing systems are not designed to collect third party charges. If councils are required to collect water services charges on behalf of the WSE, this activity will be captured under the Anti-Money	Strongly support

[2] Refer proposed new section 137A(3).

Theme	LGNZ Position	WDC Position
	Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**). We strongly recommend the Bill expressly excludes the application of the AML/CFT Act to the collection of water services charges by councils. Failing to do so will mean councils face a significant and unnecessary compliance burden.	
Community priority statements need renaming	The new subpart 4A of Part 4 of the Act introduces Community Priority Statements, which give individuals or groups in a local community a mechanism to raise their views in respect of a particular body of water. **The name of these statements is very similar to the Statements of Community Outcomes introduced under the Natural and Built Environment Bill** (which enables resource management reform). The two statements are clearly intended to have different levels of legal standing. Statements of Community Outcomes summarise the views of councils, which have a democratic mandate, and regional planning committees must have regard to these statements during planning processes. Conversely, Community Priority Statements can be made by any individual or group. The Regional Representative Group is not obligated to have regard to Community Priority Statements. We recommend that Community Priority Statements are renamed to ensure their purpose and mandate are not misunderstood by community stakeholders. A term like "interested party statement" would be more accurate.	Support
Appendix 1 : Statutory clause wording	11 specific changes to clause wording to help **clarify / correct current clauses.**	Support
Appendix 2 : Better off and No worse off parameters	This appendix provides **additional detail on what was originally envisaged as part of the 'better off' and 'no worse off' funding** packages. This is for reference only.	n/a

Appendix 2 : Taituarā Submission

The draft Taituarā submission was provided through to Whakatāne District Council on 29 June 2023. See below an extract of the Taituarā draft submission and the Taituarā position. We have captured our WDC position in relation to this and highlighted key points within the Taituarā submission for ease of reading.

Area	Recommendation	WDC Position
Establishment dates for the entities need more rigour	Clause 5 provides for the establishment dates for all of the entities (other than the Northland/Auckland entity) to be set by order-in-council. The mechanism itself seems appropriate. Some may query that some entities will stand up part way through a financial year. While such a decision raises issues for those who, for example, prepare accountability documents we accept that there is a need to provide users and affected staff with certainty as soon as possible. We don't expect many will volunteer to stand-up on 1 January 2025 or 1 January 2026! We have assumed that the order-in-council would be made by the Governor-General on advice of the Minister. Again, this would be 'standard'. However this is a significant matter for the local authorities, users of water services and the entities themselves. In a local authority, the transfer of water services is one of the largest single projects on the work programme (in terms of staff time required), and the financial implications of the transfer could be significant (especially in the short-term). **Yet there is no requirement on whoever makes the order and on any advisor to formally seek any views or any formal process or criteria. Do we want decisions as significant as this left to chance and who lobbies best. At a minimum we'd expect a Minister to seek the views of all local authorities in an entity on any proposed establishment date.** Taituarā recognises and indeed urges the Government to take steps to make the intended set of establishment dates known by the official start of the election campaign. We have advised local authorities with views on this matter to make them known post haste. Recommend : That the Select Committee agree to amend clause 5, proposed new section 6A to require the Minister to consider (i) the views of the territorial authorities and iwi in the entity's service area (ii) the capacity of territorial authorities and the establishment boards to meet the requirements by any proposed establishment date and (iii)	Strongly support

Area	Recommendation	WDC Position
	the need for certainty for the affected users of water services and staff affected by the transfer of water services.	
Technical issue with the protected transactions regime that will apply to water entity borrowing	The Bill replicates the protected transaction regime that applies to local authority borrowing under the Local Government Act. Effectively this means that, like local authorities, water entity borrowing would be deemed to be valid and enforceable despite any procedural flaws. As part of that regime, the proposed new section 173M provides for a certificate of compliance (based onr s118 of the LGA). Where the Chief Executive signs a certificate in relation to a 'protected transaction, it would be considered conclusive proof, that lenders can rely on, that the entity has complied with all statutory requirements in connection with the protection transaction. While this is a sound regime, there are practical difficulties with applying it. The only person that can sign the certificate is the Chief Executive. That simply doesn't work where councils need to enter into financing transactions, but their CE's aren't available. It's a real problem when there is an Acting CE or an Interim CE, which aren't actually offices recognised under the LGA. Our legal advisors note that lenders to councils do not accept a s118 certificate signed by them – unless legal advisors give them an opinion stating that we have reviewed the council resolutions, and confirming that the Acting / Interim CE has all the powers of the CE and can therefore sign the s118 certificate. Our legal advisors inform us that they issue about one of those opinions a week for local authorities. While we make no recommendation, we leave the committee to reflect whether they want to import this into the borrowing regime for the water entities. **The Committee might remedy include statutory authority for it to be signed by the CE "or his/her delegate"**	Support
Government Policy Statement: Water Services may duplicate aspects of	Clause 15 provides the Minister with a power to direct entities to engage in shared services across a range of corporate management or 'back-office' functions. This appears to be something of a	Support

Area	Recommendation	WDC Position
the new Ministerial power to direct entities to share services. Are both really necessary?	concession that some of the smaller entities may be relatively small organisations, and that a ten-entity model may spread some capability thin. We also note that section 133 of the primary legislation expressly empowered the Minister to include **"joint water services entity arrangements"** as a matter in the Government Policy Statement: Water Services. **It does not seem likely to us that the phrase joint water services entity arrangements would mean anything other than shared services** and then why both a power to direct entities into shared services and a power to set objectives for entities to give effect to are required . On a related matter, we were wondering if there were the opportunity for the entities to make use of a shared service arrangement for some or all of the billing, collection and enforcement of charges. Some of the local authority shared service entities provide these services for local authorities in a successful and cost-effective way of undertaking these services. Recommend : That the Select Committee agree to amend section 133(3)(a)(vii) of the primary legislation by deleting the words :and joint water services entity arrangements". Recommend : That the Select Committee agree to amend clause 15, proposed new section 137A by adding the words 'billing, collection and enforcement services".	
Transitional provisions for accountability documents, rates and development contributions are appropriate, pragmatic, and well thought through.	One of the features of the 'reset' announcements was that the establishment date for most entities has been deferred from 1 July 2024 to dates at this point unknown. Of course 1 July 2024 coincided with the start of the 2024/34 local authority long-term plans (LTPs). The primary legislation is based on an assumption that no local authority would provide three water services after 1 July 2024. As a result it expressly prohibits local authorities from including any information on these services in the LTP. That assumption would no longer hold for all but a small subset of local authorities (quite possibly only the four local authorities in the Northland/Auckland entity). The temporary concessions and amendments are a pragmatic and proportionate response to what will be a significant shift in the operating environment part way through the	Strongly support

Area	Recommendation	WDC Position
	life of this LTP (and indeed n some cases part way through a financial year). To take an example, the Bill allows local authorities the option of **excluding three water services from the infrastructure strategies** that go on in the LTP, even for those years where they own the assets. Local authorities will own the assets for two years at most, and given the other strictures in the Bill (for example the review and approval of the Department of Internal Affairs) will be limited in the range of decisions and actions they can take. Elsewhere in the Bill, clause 37 makes amendments to the Local Government Rating Act that deal with two circumstances crested by the deferral of establishment dates, specifically: • the proposed new Schedule 1AA., section 4 provides that a local authority in an entity that stands up part way through the year is expected to rate as though it will provide the water services for the entire year, and to transfer any unused funds and • provides a transitional mechanism for those local authorities that would otherwise find themselves in breach of the legal limits on the use of fixed rates as a result of changes in the mix of rates revenue due to water reform. The provision provides local authorities until their 2027 LTP and the associated revenue and financing policies to start operating within the cap. **This allows local authorities who are prudent to phase in the necessary change in the incidence of rates – and we will strongly be advising local authorities to make use of this.** The Bill makes provision to allow for levying development contributions in cases where entities stand up part way through the financial year. As with rates, the local authority will levy for the whole year and will transfer unused revenues and balances to the relevant entity using processes set out in the Water Services Legislation Bill. **We commend all of these provisions to the Committee.**	
The development contributions provisions may contain an inadvertent 'gap' in what may be	Clause 35(8) allows local authorities to continue to levy development contributions on all capital works for three water services included in their development contributions policy. This is an important provision as it's intent is to ensure that developers meet their fair share of all capital work attributable to growth not just those incurred over the transition period.	Support

Area	Recommendation	WDC Position
	Some growth councils have raised concerns as to whether the provisions have an inadvertent 'gap' in what might be recoverable vis development contributions. The Bill as it stands allows local authorities to recover a contribution in respect of capital works undertaken while the assets are in local authority ownership, and anything in a development contributions policy. The **concern lies with years 3-10 of the next LTP.** The proposed s31 (1) a) (below)requires a 2024/34 LTP to explain that water services are being transferred from the local authority. It follows that water services projects for year 1-2 will be in that LTP, but water services projects in years 3-10 will not (the TA wont incur these). **While in a development contributions policy, the fact that these projects won't be in the LTP creates an ambiguity. This is an area prone to litigation** – clarity would be helpful. See Taituara submission for detailed recommendations	

Appendix 3 : Water NZ Submission

The Water NZ draft submission was reviewed. Water NZ has reviewed the bill from a technical delivery perspective of water services on behalf of the water industry and its members.

Area	Water NZ Recommendations	WDC Position
General	NZ has a significant water infrastructure deficit. The consequence of which is evident in high level of water loss across the country, the extensive wet weather wastewater overflows, non-compliant treatment plants, un-swimmable rivers and beaches, declining freshwater and ecological health, and increasing frequency of flood inundation of homes and businesses. **Retaining the status quo with water services provided by 67 councils or CCOs is not sustainable**. **Without significant funding support from central government water services delivery and environmental outcomes will continue to decline, and nationally the cost-of-services paid by ratepayers will increase further.** Transitioning to water services entities whose sole focus will be water, with professional boards, the ability to attract the diverse skills needed and the balance sheet required to raise finance is essential to efficiently address the infrastructure deficit that has been decades in the making. Water NZ acknowledges the Government's decision to create 10 entities rather than 4 entities reflects a number of factors including a desire for greater local voice.	Support
Ten entities	**Ten entities will be better placed to address the country's infrastructure needs than the current arrangements.**	Support
Shared services	The smaller WSEs will be less able to achieve the economies of scale on offer to the larger entities. The **proposed shared service model is a pragmatic way of addressing this issue**. To ensure the policy intent is achieved, we recommend drafting changes to ensure the merging of entities and shared services clauses are not inconsistent with the Water Services Economic Efficiency and Consumer Protection Bill and the input methodologies, determinations and functions of the Commission.	Support
Shared service – additional details provided	Section 7 : New s13(a) should consider that the **direction to enter into a shared service arrangement may not be permitted under the Commission rules** or determinations (or the Commerce Act). Clarity should be given on the priority of the functions of a WSE. Section 14(2) : New s131(4A) A **water body has not been defined in this legislation** New s137B The Minister may engage with the **Commission but the Commission cannot follow any direction or make**	Support

Area	Water NZ Recommendations	WDC Position
	any change to its rules or determinations without compromising its role as an independent regulator. Recommend that the Minister's direction to merge or share services is subject to the determinations and methodologies of the Commission. New 137D The government/Minister should not seek to exempt itself from the provisions of the Commerce Act. This provision should be added into the Commerce Act through an amendment to that Act. New s173C, if a **Funding Agency is a subsidiary of a WSE then it is subject to WSEECP and economic regulation** by the Commission, is the policy intent?	
Community priority statements	The proposed community statements are a **pragmatic way of enabling the Regional Representation Group to hear from local stakeholders**, beyond mana whenua who will prepare Te Mana o te Wai statements. We recommend water body is defined to account for the forms that a community might wish to make a statement on.	Support
Staggered timeframe:	The proposed staggered timeframe will allow the 9 WSEs outside of Northland and Auckland more time to prepare for the proposed amalgamation. **Water NZ recommends the transition timeframe is announced sooner rather than later to provide certainty to staff, contractors and consultants** working across the proposed entities. We request a clear and considered transition across reforms, regulatory frameworks and other programmes to ensure efficiency and minimal confusion	Support
Voluntary amalgamation	**Water NZ supports the inclusion of provisions whereby further amalgamation is possible** with support from the relevant WSEs	Support
Water Services Entities Funding Agency	**Water New Zealand support balance sheet separation**. With the policy intent and drafting issues clarified, Water New Zealand in principle, support the creation of a Water Services Entities Funding Agency.	Support
Cohesion with other reforms:	Under the RMA reforms various "statements" are also produced. For example, regional statements under the NPS on Freshwater Management, regional statements of community outcomes and statements of regional environmental outcomes under the Spatial Planning regime. **There is a risk of confusion or lack of consistency across these statements** and the Te Mana o te Wai and Community Priority Statements. **Water NZ submits that opportunities to consolidate or rationalise these statements** so that they can apply across legislative regimes should be considered.	Strongly support – Key outstanding concern for WDC
Te Mana o te Wai definition	**TeMana o te Wai—** (a)has the meaning set out in the National Policy Statement for Freshwater Management issued in 2020 under section 52 of the Resource Management Act 1991 and any statement issued under that section that amends or replaces the 2020 statement (and *see also* sections 4, 5, and 14 of this Act); and	Support

Area	Water NZ Recommendations	WDC Position
	(b) applies, for the purposes of this Act, ~~to: water (as that term is defined in section 2(1) of the Resource Management Act 1991)~~ (i) water in all its physical forms whether flowing or not and whether over or under the ground; and (ii) fresh water, coastal water, and geothermal water. This approach is critical for timely and strategic delivery of three waters infrastructure, as sought by both reforms. Further explanatory note : Section 6 of the Act adopts the **definition of "water" in the Resource Management Act 1991, which excludes water in pipes, tanks or cisterns. This is likely to have unintended consequences**. On the one hand, the proposed Water Services Entities under the Act, and Taumata Arowai and other parties (including the water service entities) with powers, functions and duties under the Water Services Act 2021 are required to give effect to Te Mana o te Wai and on the other hand, the delivery of water services involves pipes, tanks and cisterns.	

Appendix 4 : C4LD Submission

The C4LD draft submission 28 June 2023 was reviewed – see below for details. C4LD continue to oppose the bill as noted below. WDC staff have not noted a position in relation to this submission due to the political nature of the comments contained.

Area	C4LD Recommendations
Three Waters Reform Approach	C4LD **opposes the Bill** and recommends that it **not proceed any further pending the outcome of the 2023 General Election** (currently set down for 14 October 2023).
Policy widely opposed	The Government's Three Waters policy is widely opposed by communities in New Zealand. The breadth of the **assault on community property rights** by first, the Water Services Entities Act 2022, then the Water Services Legislation Bill (awaiting its second reading), and now this Bill, has never received an electoral mandate from the people of New Zealand. With less than 100 days until advance voting opens for the General Election it is appropriate that a pause now occur and that any further work on the establishment of the water service entities ("WSEs") cease until either the Government receives an electoral mandate for its policy or a new Government has the opportunity to recalibrate policy settings.
Critique of Governments 3 Waters reform approach	In summary C4LD refers to the issues they identified in their original submission, being : - Analysis stating that significant investment is needed is flawed - Cost savings identified are implausible and the structure of the entities are ill-suited to manage costs - Proposed water service entities will be unaccountable to the public and communities of interest - As the Crown is providing a fiscal backstop to the large entities, risk that the Crown takes a more active role weakening local involvement. - Critical process flaws and the evidence based has been skewed toward a high risk reform option
Key aspects of C4LD's reform model	C4LD has reiterated it's proposed model : - The Three Waters sector has substantial room for improved performance; - A key contributing factor to this state of affairs is a poor regulatory framework governing water quality (health and environmental); - The Government should encourage (but not direct) aggregation and improved governance over 3 Waters service delivery; - The performance of the three-waters sector would substantially improve by using an approach that: o rigorously enforces minimum performance standards; and o is permissive about the way councils structure and operate their three- waters businesses; - The Government should consider also having backstop arrangements to deal with councils that fail to lift performance sufficiently to meet minimum health and environmental performance standards; and - Financial assistance to communities will likely be needed to assist deprived communities meet minimum health and environmental standards. The assistance needs to be designed to avoid rewarding past inaction and instead reward action for sustainably lifting the performance of water providers to these communities.

Area	C4LD Recommendations
	The above C4LD proposal was based on the productivity commissions approach.
Comments on current bill	**C4LD welcomes the Government's belated recognition that its original four entities model lacked any appreciable community support**. Indeed, C4LD welcomed the Government's decision to include its Three Waters policy into the "reset" that the Prime Minister announced in the early part of 2023.
	Unfortunately, the **"reset" falls short of the key elements of C4LD's proposals**. C4LD does acknowledge that the present Bill is a slight improvement on what went before, but the improvement does not move the policy dial far enough. Given that the Government's amendments are designed to address some of C4LD's critique of its policy position, a better outcome would have been for the Government to properly embrace the C4LD 10-point plan. **For this reason, we encourage the Select Committee to appoint independent advisers so that it can receive advice that can look at the issue with fresh eyes.**
Community Priority Statements	The Bill introduces a new mechanism known as "Community Priority Statements." Under this mechanism, community groups may make statements about investment priorities to an entity's Regional Representation Group ("RRG").
	The Bill requires that the RRG forward such a statement to a consumer forum to be established by the relevant entity. Additionally, the RRG may consider it in its own work when preparing a statement of strategic and performance expectations for the entity, and may consider it as part of any comments that the RRG may make on the entity's planning and reporting documentation. These latter two matters are discretionary, that is, they are not required. **Such an approach, whilst better than the previous approach, is still far short of giving effective voice to local views through ownership control.**
Number of Entities	The Bill increases the number of entitles from four to ten. This better allows the entities to align with the communities in their respective geographical areas. **This is an improvement.**
	The Explanatory Note to the Bill describes territorial authorities as "owners" of the entity. However, clause 10 of the Bill (quite correctly) does not use the term "owners" or "ownership." **This position is correct (the word "representative" is used) because territorial authorities property rights in their water infrastructure assets are being expropriated by the Crown without compensation.** In other words territorial authorities will not be owners any longer because expropriation entails, by definition, a transfer of ownership (note, however, section 37 of the Water Services Entities Act 2022 does use the word "owner", but that section predates the decision of the High Court noted below).
	This position was confirmed in the recent judgment of the High Court in Timaru DC and others v Minister of Local Government [2023] NZHC 244, where the Court observed at paragraphs 144 and 179 that "the Three Waters reforms involve a form of expropriation", and that the Crown's own literature failed to directly acknowledge "that local councils will lose central incidents of ownership that they presently hold, nor that local councils' ability to control their use of assets will be materially diluted … nor that local democratic accountability for the provision of the Three Waters services in local communities is essentially lost".
	Increasing the number of entities does not alter the fact that the Crown is expropriating without compensation the assets of communities held by their local authority.

Area	C4LD Recommendations
Conclusion	As noted earlier, C4LD's recommendation is that the **Bill not proceed any further pending the outcome of the 2023 General Election** (currently set down for 14 October 2023).