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Finance and Expenditure
Parliament Buildings
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Members of the Finance and Expenditure Select Committee

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

Wellington City Council (the Council) welcomes the opportunity to submit on the Water Services Legislation (WSL) Bill and the Water Services Economic Efficiency and Consumer Protection (WSEEC) Bill.

The delivery of safe, reliable drinking water, wastewater and stormwater services for current and future generations is contingent on cooperative working relationships between local government, iwi, the Water Service Entities (WSEs) and our partners in central government, with the council-WSE relationship being a critical one for the success of three waters reform.

Three Waters in Wellington City

The Council's three waters network (drinking water, wastewater, and stormwater) includes 2,653km of pipes, 65 reservoirs, 103 pump stations and three treatment plants, with a combined value in the billions. Our three waters system, by its very nature, is largely out of sight and can be easily overlooked. In December 2019 and into early 2020 several high-profile pipe failures, particularly in Wellington's wastewater network, led to concerns about the condition of the city's underground infrastructure. These three waters network challenges that are faced in Wellington are by no means unique, with local authorities throughout the country grappling with aging infrastructure that is now starting to fail, and the increasing cost of undertaking upgrades.

In responding to these challenges, the Council established a Mayoral Taskforce on Three Waters in 2020 to inquire into specific issues related to water in Wellington. The Taskforce unanimously agreed that transformational change in governance, asset ownership, funding and management is required to lift the city's three waters network performance to the level appropriate for a modern, inclusive, and environmentally sustainable city.

Our key comments on the Water Services Legislation Bill

We recognise that the relationship between councils and the WSEs is critical. We are concerned that the legislative difference between the purpose of councils and the purpose of the WSEs will place a strain on this relationship. It is not clear in the legislation what partnering and engagement with councils will mean in practice – this needs to be clarified.

- Our Council finds it unacceptable that local government must collect water charges on behalf of WSEs until 2029. We oppose being compelled to collect revenue for a service that we no longer control and deliver, despite a 'reasonable payment' being made for providing this service, particularly because of the potential for confusion this will cause for our residents.
- We would have expected to see the legislation providing greater clarity for how the WSEs will give effect to growth and placemaking requirements of the Council's District and Spatial plans, as the WSEs prepare 30-year infrastructure investment plans.

Water Services Legislation Bill

Purpose of WSEs and local government

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

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

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

Recommendation

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

Relationship Agreements – Part 13, sub-part 3

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

WSEs are required to enter into Relationship Agreements with a territorial authority owner, a regional council whose boundary is inside, or overlaps with, the water services entity's service area,

and a transport corridor manager whose jurisdiction overlaps with the water services entity's service area. One Relationship Agreement can be entered by multiple parties.

These agreements are not legally binding and are to be high-level, setting out how the parties intend to work together collaboratively and in good faith. Given that the relationship agreement will not be legally enforceable, the WSL Bill should do more to establish the context of the special role and nature of the relationship agreement between a WSE and a council – via an express statutory basis and mandate.

In its current form, the WSL Bill treats councils as simply another stakeholder, rather than the core organisation undertaking growth planning and placemaking which three waters services enables.

The legislation needs to reflect that WSEs will operate within a broader system that services communities but that councils remain central to that overall picture as well as being democratically accountable. Communities should be able to expect both service organisations to work together for their benefit.

Recommendation

That the WSE extend the intention of Relationship Agreements to include the special role and nature of the Council. For example, an express expectation of joint care and stewardship for all the systems impacted by their respective actions for the benefit of local communities.

Specifically, the WSE needs to clarify how it will give effect to growth and placemaking requirements of the Council's District and Spatial plans as the WSEs prepare 30 -year infrastructure investment plans.

Government Policy Statement on Water Services

The WSL Bill further extends the scope of the Government Policy Statement: Water Services (GPS) to empower the Government to set policy expectations with regarding:

- Geographic averaging of residential water supply and residential wastewater service prices across each water services area, and
- Redressing historic service inequalities to communities

The extension of the role of the GPS allows a future Minister to impose a set of priorities upon the WSEs that might, for example, override the policy positions of a Regional Representative Group (RRG) and the constituent territorial authorities. The Minister can set expectations as per Section 133 that will significantly direct investment decisions and the associated spending without any financial contribution (or provision of other support) to the achievement of their own objectives.

Recommendation

That the Committee amend clause 133(2) by adding a clause that requires the Government to explicitly state how it intends to support other agencies to implement the GPS: Water or explain its reasons for not providing support.

Collecting water services charges – clauses 336 - 338

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

Our Council finds it unacceptable that local government must collect water charges on behalf of WSEs until potentially 2029. We oppose being compelled to collect revenue for a service that we no longer control and deliver, despite a 'reasonable payment' being made for providing this service.

- This arrangement has the potential to cause public confusion as councils will be collecting money for a service, they have no direct accountability for.
- There will potentially be a significant administrative burden to manage for unpaid charges. It is noted that local authorities are not required to take responsibility for unpaid charges but are required to advise the Entity Chief Executive about the unpaid charge and if Council does not intend to collect the unpaid charge.

Recommendation

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

Governance structure and accountability

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

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

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

- In resolving any tension between councils and the WSEs, councils would potentially be limited to escalating issues to the RRG and providing input on relevant planning/ policy documents (unless resolution is included in a ‘relationship agreement’).
- We are concerned that planning and investment prioritisation processes have the potential for misalignment between those plans councils produce and the prioritised infrastructure delivery of the WSEs. For example:
 - Approval of the Statement of Expectation (SOE) and Statement of Intent (SOI) as they need to be aligned with the representative groups at the sub-WSE areas.
 - Alignment of the WSE planning processes with spatial planning and proposed Resource Management Act (RMA) reforms at regional and local levels.

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

Balance sheet support

The observation from reviewing the Water services legislation Bill was a distinct lack of direction relating to funding of the new WSE’s and any framework or direction for how the entities will be supporting their balance sheet. We would have expected to see some borrowing guidelines relating to who can lend to the organisations along with some direction on what constraints would be applied to the borrowing to guide treasury / financing functions once they are stood up.

It is critical that when assets are transferred off our balance sheet, our Council is left “no worse off” as contemplated when the reform process started – without any detail about how this will occur in this Bill, Council is exposed to significant risk.

The Water Services Economic Efficiency and Consumer Protection Bill

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

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

The economic regulator has an important role to help reassure consumers that there has been proper scrutiny of costs for water services through the range of controls set out in this submission. We are supportive of a range of economic regulation for water, including information disclosure, price-quality, pricing, consumer protection and dispute resolution.

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

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

Wellington City Council requests the Select Committee amends the WSEEC Bill to mandate a regulatory review following Commerce Commission reporting on preferred regulatory arrangements, with the review preferably undertaken by the High Court.

Integrated and bespoke approach:

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

This includes how economic regulation for three waters relates to:

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

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

- The WSEs differ from the other regulated monopolies in their degree of vertical integration and complexity – spanning from bulk water supply, to reticulation, servicing households and businesses across three waters, and the billing and customer relationship with end users. They must also grapple with security and scarcity constraints.
- The WSE will offer a fully integrated service – collection, treatment, and distribution of three waters. There is no separate retail layer (as in electricity, gas, and telecommunications), so the firms will have to manage billing, revenue assurance, infrastructure planning and investment.
- The WSE will be subject to Government stewardship arrangements, including a Government Policy Statement.
- The WSEs will be bigger (by value) than any network the Commerce Commission currently regulates, and this will only grow based on the renewal, growth, service improvement and climate change adaptation investment anticipated. Investment will include significant CAPEX (capital expenditure) programmes across multiple projects in each WSE.
- Economic regulation for water will be closely interlinked with wider regulation and governance / representation. Roles, responsibilities, and decision-making accountabilities need to be clear.

- In addition to economic regulation, the WSEs will be regulated by Taumata Arowai and by environmental planning controls (primarily through regional councils). These will directly drive investment requirements. Economic regulation needs to accommodate other regulatory requirements and how these will impact on costs, quality, and management practices.
- Water is essential for the well-being of people. Water services cannot simply be disconnected if there are issues of non-payment or debt. This includes statutory requirements under the Health Act.

Support for policy direction

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

- economic regulation focuses on the four proposed WSE, rather than other smaller rural and community-based providers and schemes. This is to ensure that the regulation model focuses on where it can have the greatest benefit, is cost effective and can be effectively resourced. We are also supportive that economic regulation will apply to all three waters
- the Bill allows for flexibility and different approaches to regulating entities, such as Entity A, and services, such as stormwater
- information disclosure regulation and quality-only regulation should apply in the first regulatory period and subject to flexibility on implication dates that information disclosure regulation and price-quality regulation will apply in the second regulatory period. A flexible approach is critical to enable development of the information and capability requirements
- The Commerce Commission be required to set and enforce minimum service level codes
- A consumer dispute resolution scheme be established for the three waters sector, as well as other measures to strengthen the consumer voice
- A position of a Water Commissioner, or similar, be established on the Commerce Commission board

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

We are concerned that the legislation, as drafted, does not sufficiently deal with the following matters, and submit the following points.

Outcomes:

- Economic regulation needs to be fully integrated and aligned with the design and policy decisions of the water reforms. Particular attention needs to be given to the wider community benefits and environmental outcomes expected.
- In addition to efficiency, investment by the WSE must also balance meeting regulatory requirements and delivery of broader social, cultural, and environmental outcomes. There needs to be more recognition of climate change, resilience and the costs and service levels that this will require. There are also cost and service level implications for meeting specific environmental and social expectations. e.g., how wastewater is treated and how drinking water is disinfected. The new freshwater regulations will also require significant investment into wastewater treatment and retention ponds.
- Such considerations are outside of a focus on efficiency and need to include thinking around resilience, (increased stormwater capacity, redundancy of pipe networks e.g., duplicated mains, wastewater sumps for overflows, and bigger water storage). Such matters will need to be factored into any price / quality regulations.

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

Objective:

- Clause 12 appears too narrow to cover all the relevant characteristics and outcomes enabled by WSE services. These include a range of environmental, economic, and social outcomes.
- We submit that a modified version of the objective statement should be developed, which balances a workably competitive market (and understood outcomes of innovation, investment, efficiency, quality, prices, and profit), with community and environmental outcomes, and the principles of Te Mana o te Wai.
- We suggest three complementary objective statements. These would need to be aligned with the statutory objectives of WSE (this may require amendments to the Water Services Legislation Bill). The three objectives would be:
 - Outcomes for consumers consistent with competitive markets and relevant to services provided to connected parties.
 - Outcomes for communities and the environment consistent with a well performing local authority. This part of the objective statement could borrow from [s14 of the Local Government Act 2002](#), and most of the matters there are relevant to the provision of public or quasi-public services.
 - Outcomes consistent with Te Mana o te Wai. The part of the objective statement could borrow from [section 3.2 of the National Policy Statement for Freshwater Management 2020](#).

Te Tiriti and Te Mana o te Wai:

- Economic regulation will also need to consider how to give effect to the principles of Te Tiriti o Waitangi. This includes recognition of co-governance of the WSE and how economic regulation reflects and recognises the principles and outcomes sought through Te Mana o te Wai which puts the health of a waterbody first, human health needs second, followed by recreational, economic, and other needs.
- We recommend that further consideration is given as to whether the Bill sufficiently considers how economic regulation can give effect to Te Tiriti o Waitangi and the principles and outcomes sought through Te Mana o te Wai. This may require a specific statutory objective or changes to clauses 6 and 12.

Consumers:

- The Bill does not adequately identify the range of consumers, services provided to each consumer group, and whether these services are supplied by a WSE or another body. This may require amendments to clause 7 or a new section.
- Consumers will include a range of types of users:
 - o households
 - o schools, hospitals, and other social / community institutions
 - o Iwi / Māori
 - o local and regional councils

- o land and property developers
 - o a range of corporate and commercial users, including very large industrial consumers
 - o rural consumers
 - o vulnerable consumers
 - o private and community water schemes and self-suppliers
- Defining what is meant by a consumer and understanding the range and variability of water consumers will be critical to successfully developing a regulatory framework that advances the long-term interests of consumers. We recommend that further consideration and focus is given to defining consumer groups, services, and the role and statutory powers of WSE and economic regulation in relation to each group.
 - Wellington City Council requests the Select Committee amends the WSEEC Bill to insert an additional regulatory goal so that where practical WSE's charges will reflect costs incurred delivering the relevant service when provided efficiently.

Capability and timing:

- Timing and enabling flexibility in the implementation approach are critical to support the development of the required capacity and capability of WSEs to meet economic regulation requirements.
- Water reforms will take time to embed and mature. In this environment, it will be vital that economic regulation plays a constructive and proactive role to support and work with WSE and Taumata Arowai to meet bottom lines and regulatory requirements.
- Economic regulation also places a lot of demands on an organisation in terms of reporting and long-range planning. We therefore consider that it will be important to take a transitional approach to economic regulation while also ensuring that the pathway is clear and achievable so that this can be planned for and resourced.
- Wellington City Council requests the Select Committee amends the WSEEC Bill to regulate a sufficient period of time between charges being set and communicated, and charges being implemented to ensure time for water service users to understand the financial implications of charges and to access financial relief if required, and to allow organisations who may provide financial relief sufficient time to understand the financial implications of charges.
- Establishment and transition will require a learning culture and an approach based on sharing of lessons and raising sector capability.
- We suggest the Bill includes a stronger focus on the capability, culture, and behaviours to ensure economic regulation plays a constructive and proactive role to support and work with WSE and Taumata Arowai to meet bottom lines and regulatory requirements
- Wellington City Council requests the Select Committee amends the WSEEC Bill to mandate resources being made available to councils for procuring external advisors to support engagement in the Commerce Commission-led process to define the regulatory regime
- Setting the optimal planning horizon and cycles are critical to ensure longer term innovation and investment planning to address complex issues. Regulatory periods ideally need to align with broader spatial and investment planning by local government. The timing and alignment of these cycles will require further consideration through the Resource Management Act reforms and review local government processes. This is currently unclear.

Thank you for the opportunity to submit on these bills. As the Capital City, we are well placed to work with the Government in the interests of Wellington and New Zealand and so would welcome the opportunity to make an oral submission to the Committee.

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