

20 February 2023

Chair and Members  
Finance and Expenditure Committee  
Parliament Buildings  
WELLINGTON

By email: [fe@parliament.govt.nz](mailto:fe@parliament.govt.nz)

Dear Sir/Madam

## **WAIMATE DISTRICT COUNCIL SUBMISSION ON WATER SERVICES LEGISLATION BILL**

### **Introduction**

1. At the time of writing, the new Prime Minister signalled that changes in approach to some policy issues may eventuate and some aspects of the Three Water Legislation may be reviewed. However, Prime Minister Hipkins has not specified what policy changes may be made or whether the Government's current Three Waters policy are part of those mooted changes.
2. We urge the Select Committee to ask the Prime Minister and Cabinet to reassess the Three Waters model and short implementation timeframe. Cyclone Gabrielle (with some earlier assistance from Cyclone Hale) has exposed the true risk of the current model. No matter how well these and other areas of public policy had been managed, Gabrielle would undoubtedly have done some real damage. However, what is very clear now is the true consequences of an outdated centralised top-down approach in areas where what is really needed is local knowledge and decision-making by the people who bear the real risk, the communities which suffer the impact of natural disasters exacerbated by poor decision-making.
3. Cyclone Gabrielle's siblings and friends are almost certain to be periodic visitors to our shores.
4. Not just the economic costs, but the sheer humanity, demands a complete rethink of the benefits of localism and how we manage essential infrastructure, land use and economic development so as to mitigate the risk, manage environmental events and recover from natural disasters. What is very clear is communities at risk deserve to retain a much stronger say in decision-making than our current and future (for example Three Waters and RMA reforms) top-down processes allow.

5. Our rural communities deserve a much greater emphasis on determining where and what/who they are. This means recognising that most communities currently are not a significant part of our formal governance structures; it's simply a reality that most New Zealanders identify with their immediate district as their place to plan for, create, grow and protect.

## Local government funding

6. This part of the submission addresses two pivotal but little understood aspects of local government funding and the implications for past and future investment. The Three Waters section of the Department of Internal Affairs website, discussing why reform is needed, states:

*The evidence shows as a nation we haven't adequately maintained and improved our water service infrastructure. Without change, the safety, reliability and affordability of these services will lead to more New Zealanders getting sick from contaminated drinking water, more sewage spills and increases in cost.*

7. Its FAQ section begins its answer to the question "what led to the situation?" by stating: "Historical underinvestment by councils in water infrastructure". There is a very clear inference the Government's view is the ongoing underinvestment is the fault of councils, necessitating government intervention to put things right.
8. Closer examination suggests the major responsibility lies not with local government but with central government with serious implications for the future of the Three Waters Reform undertaking. There are two separate areas where central government has fallen short and effectively created the situation the country now faces with underinvestment in three waters infrastructure.
9. Further, during the review of capital works programmes delivered by local government as part of the Government's Three Waters Request for Information (RFI) by the Water Industry of Scotland and subsequent report by WICS, it was noted that, on average, New Zealand councils achieved 70% of their long-term-plan capital projects. This was publicly reported as an abject failure, however, if this was KiwiBuild, 70,000 houses would have been constructed, and here we are establishing another Crown mega service provider.
10. At the beginning of this century councils started increasing rates to meet the cost of additional investment in essential infrastructure, primarily potable water, transport, sanitation, and other growth infrastructural assets in responding to increased standards being implemented by the Ministry of Health. It is important to note that post WWII and the massive investment in public infrastructure, for 25 years very little attention was applied to recognising the whole-of-life asset costs and the establishment of funds to replace these depreciating assets. As a result, asset owners and/or councils have been in 'catchup mode' since the 1980s.
11. In 2012, the then Minister of Local Government introduced the Better Local Government programme. He set the context as "the Local Government Act 2002 was accompanied by extensive new planning, consultation, and reporting requirements. Assurances were given that these changes would not add significant costs" and went on to state the experience has been quite different:

*Rates have increased by an average of 6.8% per annum since – more than double the rate of inflation. It is noteworthy that in the preceding decade (1992-2002) rates increased by an average 3.9% per annum, slightly above the inflation rate. If rates had increased at the same rate as the preceding decade, the average household would be paying \$500 per year less in rates, and the economy as a whole \$1 billion per year less.*

12. Separately, commenting on the intent of the Better Local Government programme, he made it very clear that rates should increase no faster than inflation and population growth, except in extraordinary events.
13. Although this intention was not translated into legislation the minister was successful in normalising the expectation so that typically, when considering rates increases, most councils felt obliged to keep broadly within those limits, and most candidates for election committed themselves to holding rates down.
14. It is an extreme irony that central government, having effectively constrained local government from increasing rates to fund further investment in infrastructure, is now criticising local government for failing to increase rates to fund further investment in infrastructure. It is beside the point to note that the government which created the constraint was led by a different party from the government which is now criticising local government.
15. Responsible government, dealing with the funding of 30-50 year plus infrastructure, should ensure both that the three yearly electoral cycle does not result in dramatic changes in the context for infrastructure investment, especially when those changes run contrary to the public interest and that it does not, by its own actions, prejudice the ability of councils to fund activities to the required level.
16. The second area is the inherent nature of local government funding. As a creature of statute, local government has available to it only those revenue sources conferred or enabled by statute. The only taxing instrument local government has available to it is property rates which for most councils represents their primary source of income. An important and, again for most councils, the next most important source of income is fees and charges. It is settled case law that fees and charges which recover more than the cost of the service constitute a tax and thus require legislative authority for charging more than the cost of the service.
17. What has been clear for many years is there is an inherent imbalance between local government's revenue raising power – rates – and its service delivery obligations. Property rating is widely recognised as a very unpopular tax. This unpopularity is magnified by the way in which rates are set and collected. There is no equivalent of the automatic inflator central government enjoys with income tax and GST. Each year virtually all councils face a reluctant ratepayer body as they strike rates for the coming year.
18. For at least two decades, if not longer, successive central governments have failed utterly to ensure that local government has available to it adequate funding powers to meet its increasingly complex investment and service delivery obligations. This is despite the fact that three waters services are essential services for every New Zealander. Responsibility for ensuring an effective operating environment for water

service providers should be seen as one of the most significant responsibilities of any government<sup>1</sup>.

19. Where those providers are non-government, this means ensuring adequate and acceptable funding arrangements. Given the stress which property rates already impose on many in our communities, in practice this means government ensuring that the provision of appropriate funding is treated as a priority for central government expenditure. The obvious option, following long settled practice in Australia, is for a proportion of GST to be allocated to a national Grants commission for distribution to councils in accordance with criteria agreed to ensure horizontal equity.
20. The problem will not disappear with the implementation of the Three Waters Reform (assuming they do proceed). It is very clear the present government has no intention of providing any funding for the new water service entities. As recently as in Prime Minister Aderm's speech to the recent LGNZ conference, the Prime Minister stated:  

*"But we're also clear that central government should not have an ownership or funding role for the entities. These entities can achieve the scale and specialisation required to operate on their own."*
21. An expected pricing strategy for the entities has not yet been revealed. It is clear, however, from the stance the Government is taking that, in one way or another, the full cost of service provision will be met by customers. This means either bulk charging of councils to be passed on to users through rates or for those councils which have water meters in place, volumetric/step charging of individual users.

## General comments

### 22. Opening statement

- a. For the past 4 years, Waimate District Council (WDC) (and as a member of the Communities 4 Local Democracy) formally and informally (including during a visit and inspection of our rural water facilities by the Minister for Local Government) repeated our request to the Minister and Prime Minister to pause this reform (and others) until such time as the Review into the Future for Local Government is complete. Only when we know what the future for local government will look like, should we decide on the best approach to delivering three waters. There is also likely to be significant integration issues between this Bill and resource management legislation, lending further weight to pausing this reform.
- b. The Bill treats councils as 'one of many stakeholders' for Water Service Entities (WSEs) to engage with. This is very disappointing, as the relationship between WSEs and councils is a crucial one. It must enable the ongoing role and functions of local authorities, otherwise there will not be a clear focus on the needs of local communities, and after all, councils are listed as owners. Existing relationships and the experience and knowledge of councils must be respected and leveraged

---

<sup>1</sup> New Zealand has ratified the International Covenant on Economic, Social and Cultural Rights and on Water. This provides that "The human right to water entitles everyone to efficient, affordable, physically accessible, safe and acceptable water for personal and domestic uses." The obligation to observe that requirement rests with government.

if the system is to operate successfully. This includes regional councils, who are the primary regulator for stormwater and wastewater discharges.

- c. WSEs can only establish a controlled drinking water area with permission of the landowner or on land that the WSE owns or has long-term control over. The term 'long-term control' is clearly quite critical to whether and where controlled areas can be established.
- d. There is no definition of what constitutes long-term control. The dictionary definition of control is "the power to influence behaviour or the course of events" and appears to rule out most other forms of land tenure (such as a lease). It is also not clear what long-term means – is it three years, five, ten, fifty or 100 years? This is an issue that may well come up if anyone is issued with a compliance direction as per clause 233, or prosecuted for not meeting the terms of such a direction.
- e. **Recommendation:** That the Select Committee amend clause 231(2) to clarify what constitutes long-term control for the purposes of establishing a controlled drinking water catchment area.

### **23. Clause 252 Pipes to be charged with water**

*A water services entity must at all times keep charged with water the pipes to which fire hydrants are affixed to by the water services entity under section 251.*

*(2) Subsection (1) **does not apply**—(a) in the case of an unusual drought, an accident, or a shortage from any cause of the water supply.*

- a. The addition to subsection (1) (a) "shortage from any cause of the water supply" renders clause 242 inoperable.
- b. **Recommendation:** That the Select Committee amend clause 242 (1)(a) and remove the words "shortage from any cause of the water supply".

### **24. Section 144 amended (Water services entity must respond to Te Mana o te Wai statement for water services)**

*Section 144 (2) A response to a Te Mana o te Wai statement for water services must include—*

*(a) a plan that sets out how the water services entity intends (consistent with, and without limiting, section 4(1)(b)) to give effect to Te Mana o te Wai, to the extent that it applies to the entity's duties, functions, and 15 powers; and*

*(b) a statement on how the plan gives effect to the obligations specified in section 4.*

*and*

#### ***Te Tiriti o Waitangi/the Treaty of Waitangi***

*The Water Services Entities Act 2022 contains provisions that recognise and respect the Crown's responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi. This Bill adds to those provisions by—*

- *providing that a function of a water services entity is to partner and engage with mana whenua in its service area;*
- *requiring engagement with mana whenua in relation to the exercise of particular*

- *functions and powers of a water services entity;*
- *requiring the chief executive of a water services entity to report on how an entity is giving effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi and Te Mana o te Wai;*
- *providing that, during the establishment period for water services entities, all persons exercising duties, functions, or powers must uphold the integrity, intent, and effect of Treaty settlement obligations*
- *providing that a subsidiary of a water services entity must give effect to Treaty settlement obligations that apply to the parent entity;*
- *providing that contracts, arrangements, or understandings which local authorities have entered with mana whenua relating to water services will transfer to water services entities.*

### **Relationship to Treaty settlements**

*To ensure that Treaty settlements are enduring, the Water Services Entities Act 2022 provides that:*

- *an operating principle of water services entities is to give effect to Treaty settlement obligations, to the extent those obligations apply to functions, duties, and powers of the entity; and*
- *if a provision of the Act is inconsistent with a Treaty settlement obligation, the Treaty settlement obligation prevails.*

*WSEs must give effect to Te Mana o Te Wai in their plans and policy statements. When doing so they must engage with the community and tangata whenua to decide what Te Mana o Te Wai means for the waterbodies in their region. Te Mana o Te Wai requires the values of freshwater to be managed according to the hierarchy of obligations, in a way that prioritises:*

- *First, the health and well-being of water*
  - *Second, provides for human health such as drinking water, and last*
  - *all other uses for people and communities to provide for their social, economic and cultural well-being.*
- a. WDC has considerable concerns that iwi and hapu can alter Te Mana o te Wai through change-statements at will, and these will be binding on the WSEs and this places extraordinary control by iwi over the WSEs. Further, this provision opens the door for the conditions of all future Te Mana o te Wai statements and Treaty settlement claims to be incorporated into the operations and performance measures of the WSE.
  - b. From 1 July 2024, the WSEs will become the four largest service providers in New Zealand with a total monopoly over essential water, wastewater and stormwater assets and services. It appears that the draft Bill places the WSEs constitutional foundation at risk of continual intervention by iwi/hapu corporations.

25. WDC is concerned about the misalignment of purpose between councils and WSEs, as we are nervous this will cause considerable tension. For example, what will happen if or when the view of community needs diverges between a local council and the WSE?

Councils are charged with promoting social, economic, environmental and cultural wellbeing of their communities. WSEs will not, the Bill therefore needs to acknowledge that councils' ability to influence three waters services will be close to non-existent.

26. WDC also notes the Bill does not rectify the lack of public accountability in the governance structure of WSEs.
27. WDC supports the requirement in the Bill for the WSEs to 'partner and engage' with councils, but it is unclear what this actually means in practice, for example, how will the function of the WSEs connect with councils' placemaking and community wellbeing focus, when the draft Bill does little to direct or mandate it.
28. **Council controlled organisations**
  - a. It is very disappointing to note that the definition in the Bill includes any local authority, council-controlled organisation (or subsidiary of a council-controlled organisation (CCO)). While WDC does not have a CCO it is clear that the material impact of the three waters reform on councils that do operate CCOs has not been thought through. For example, the farm purchased by Ashburton District Council and the forest block purchased by Hurunui District Council, which, in part is used for the discharge of effluent, and these councils could lose these investment properties to the WSEs.
  - b. We request the Committee urgently seek advice on this issue. We would strongly oppose the capture of CCOs within the new system, if this was in fact intended.
29. **Stormwater** – WDC is deeply concerned about the transfer of stormwater to the WSEs and ask the Committee to very carefully consider how problematic the transfer of stormwater and flood management assets and services will be. In fact many questions have remained unanswered. Stormwater management and flood protection from overland flows are closely linked, which has not been properly considered, as there is significant complexity associated with the transfer of these networks to the WSEs. A phased transition is required.

## Further information

30. For further information or to answer any questions about this submission, please contact me on [stuart.duncan@waimatedc.govt.nz](mailto:stuart.duncan@waimatedc.govt.nz) or direct dial 03-689-0022.

Waimate District Council thanks the Committee for the opportunity to make a submission.

Yours sincerely



Stuart Duncan  
CHIEF EXECUTIVE