Tauranga City Council and

Te Rangapū Mana Whenua o Tauranga Moana

Joint Submission - Water Services Legislation Bill

24 February 2023

Section 1

1. Introduction

Tauranga City Council (TCC) forms part of Entity B Water Services Entity (WSE) that will be known as Western-Central Water Services, along with 21 other Councils. The city has a population of 155,200, making it the second largest Council in Entity B.

TCC 3 water assets, as of 30 June 2021, are valued at $1.53 billion, with debt of $447 million. The capacity to continue to service a high-growth city is the major concern of our staff and Commission.

The relationships between TCC and Mana Whenua o Tauranga Moana are highly valued. There are 17 hapū and iwi within Tauranga Moana whose responsibilities and duties are within the TCC area. TCC gives support to the autonomous body of Te Rangapū Mana Whenua o Tauranga Moana to work in partnership and ensure that Tauranga Moana interests are protected throughout this change.

We have taken this opportunity to work together on a joint submission on the Water Services Legislation Bill. While this Bill puts the building blocks in place for the WSE, there is still work to be done to alleviate some of our concerns about reforms.

NB: A separate Te Rangapū submission was also lodged on 12 February 2023, in order to secure an oral submission spot.

2. Background

There are 140 TCC staff who are focused on the three waters business, 30 of whom are between 50% and 100%, with a further 157 staff (estimated) that support the three waters business functions to varying degrees. It is important to note the impacts from the 3 Waters Reform will be far reaching for our staff, our council, and our community.

We would like to acknowledge that the key outcomes that underpin the 3 Waters Reform are outcomes that TCC and Te Rangapū fully support:

- Safe, reliable drinking water
- Better environmental performance of wastewater and stormwater services
- Efficient, sustainable, resilient, and accountable water and sewage services
- Making water affordable for future generations.

TCC believes three waters reform has the potential to enable sustainable, affordable, and consistently high-quality waters services at a national, entity and local council level. Removal of current and future three waters debt from TCC's balance sheet would strengthen Council's financial position and might allow us to better deliver other services, infrastructure needs and the four wellbeing benefits to our community on a long-term, sustainable basis.

3. Waters Reform Reset

We note that Cabinet has asked the new minister of Local Government to report back on how to refine the reforms. The Prime Minister has signalled that any change to the structure would likely include a change to the governance structure and that the Government will work with authorities on this. https://www.nzherald.co.nz/nz/politics/pm-chris-hipkins-to-announce-bonfire-of-the-policies-today-rnztvnz-merger-gone-income-insurance-scheme-changing/E4RYAKQ27JD53B7LHUCTOXUQYY/.

In respect of Māori representation, DIA have confirmed that engagement / representation will be with iwi and post settlement groups. This is unlikely to accurately represent the kaitiaki of particular whenua or taonga. The legislative description implies a national 'one size fits all' and does not allow for local representation on 'local' whenua or taonga. TCC / Te Rangapū position is for a partnership 'place based' approach with the primary focus being the appropriate utilisation and care of the local assets and kaitiakitanga over the natural resource, not necessarily ownership.

We recommend that:

3.1 Local Government Ownership and Shareholding

that the Bill amend the governance arrangements set out in the Act to establish the new entities as statutory bodies in the ownership of local authorities with the initial shareholding based on the value of the net assets transferred (water asset values less associated debt). The shareholding would then be adjusted over time by increasing by area for each 10,000 additional population. This would ensure that the initial asset value and future growth are reflected in the shareholding of each area, whilst allowing for the scale of consolidation and efficiency for the Water Services Entity to provide for water services.

3.2 Place Based Kaitiakitanga for Maori

that Māori representation and participation is based on a partnership "place based" approach with the primary focus being the appropriate utilisation and care of the local assets and kaitiakitanga over the natural resource, not necessarily ownership.

The suggested "place based" approach is:

- Determine the area or "place" under consideration
- Undertake an analysis to determine kaitiaki - likely to be iwi and / or Hapū, possibly marae groups, or adjacent landowner. Every situation could potentially be different
- Engage directly with those kaitiaki in the management of water services at "place" or over a particular water resource
- Ensure kaitiaki views are contingent to any decision making.

3.3 Stormwater Timeline

We support the transfer of all three waters to WSEs to align with Te Mana o te Wai obligations and also deliver the expected Three Water reform outcomes. The Bill provides clarity in some areas regarding the transfer of stormwater services, whilst raising issues and questions in others, which are noted in Section 2 below.

In order to ensure an effective and efficient stormwater service for our communities, our position is that the timeline for transferring stormwater assets, debt and services should be extended. The complexities of transferring stormwater assets and services, as well as understanding WSE and Council's ongoing obligations in delivering a cohesive stormwater service for customers requires further consultation and time.

4. Key Concerns

TCC has previously sought feedback from the community where the following key concerns were captured. The impact of 3 Waters reform to these concerns is monitored on a regular basis.

4.1 Governance Arrangements

Our position is outlined at 3.1 above, in that the Bill amends the governance arrangements set out in the Act to establish the new entities as statutory bodies in the ownership of local authorities with the initial shareholding based on the value of the net assets transferred (water asset values less associated debt).

The shareholding would then be adjusted over time by increasing by area for each 10,000 additional population.

This would ensure that the initial asset value and future growth are reflected in the shareholding of each area, thereby addressing the principal concerns about expropriation of assets raised by communities across the nation, whilst allowing for the scale of consolidation and efficiency for the Water Services Entity to provide for water services.

4.2 Growth and Development

Our community needs assurance that three waters investment will be available to cater for the service growth required by new housing development, intensification within the city's existing footprint and redevelopment of the inner city. This investment needs to align with the respective agreed requirements of the relevant spatial / resource management plans that are in place.

The Bill provides for the WSE to be plan 'takers' rather than plan 'makers', however there are further provisions within the Bill requiring the WSE to develop stormwater management plans and other operational plans.

Council is required to promote the social, economic, environmental, and cultural wellbeing of our communities both now and into the future. A WSE is required to pursue statutory objectives which may not always align with TCC's objectives, either in substance or timing. It is unclear how any misalignment will be addressed, with the only possible action to escalate to the Regional Representative Group.

TCC's position is that further clarity be provided on how potential misalignment of planning between Councils and WSE will be managed. Without such alignment there is a high risk of investment not occurring when required and severely impacting on the ability of TCC to facilitate the provision of land for growth and development.

The requirements for gaining consent from all landowners in relation to new works on Maori land with more than 10 owners are onerous and likely to place significant practical impediments to timeframes and costs for new developments. In addition, if an owner does not consent, or does nothing at all, or imposes unreasonable conditions the onus is on the Water Services Entity to obtain "approval" from the District Court. This will mean increased delay and cost, negatively impacting on the speed and efficiency in delivering water services infrastructure.

4.3 Workforce

TCC have in excess of 270 staff that will be impacted by the reforms, whose skills and talents are highly valued. As a good employer, TCC will support all affected staff through the transition process and support the provision of The Staff Room portal and Staff Transition Guidelines as tools in the transition process.

Transition support funding has been utilised to provide staff transition support. TCC intends to continue to invest in our staff and enable a smooth transition process.

4.4 Protection of Mana Whenua (Hapū, iwi) Interests and Concerns

The detail of the submission points of Te Rangapū Mana Whenua o Tauranga Moana have been included in Section 3, below.

In summary these concerns are:

a) Undermining of iwi and hapū rights and interests in water.

b) Upholding Tiriti o Waitangi settlements.

c) Partnering and engaging with mana whenua.

d) Te Mana o te Wai statement for water services.

4.5 Communications and Engagement

The intent of these reforms has been poorly communicated by Government, such that the general level of community and mana whenua understanding around key aspects of the reforms is lacking and local government has been placed in the difficult position of trying to keep our communities and mana whenua informed about a process we are not leading and do not have full information about.

TCC's position is that communicating quality and easily understood information on Three Waters reform with our communities, including the expected benefits, impacts and timelines is the role of Government and is urgently required to support the next stages of reform.

4.6 Transition Timeline Viability

The Bill outlines several areas where the WSE can require Councils to continue to provide services such as 'pass through billing' and stormwater charging on behalf of the WSE. This 'soft launch' approach adds significant complexity, uncertainty, and cost for Councils, with potential confusion for our customers.

TCC's position is that from Day 1 the WSEs should provide all water related services, directly to their customers. This would smooth the transition process for those most impacted and remove the requirement for further transition activities in the coming years.

As noted in 3.3 above, the transfer of stormwater assets, debt and services requires an extended timeframe to fully resolve the complexities and provide a smooth transition.

It is our position that the transition timeline needs to ensure that from Day 1 the WSE provides all water related services, without residual service provision from councils, and that the transition timeline for stormwater is extended.

4.7 Stormwater Infrastructure and Service Provision

There is uncertainty regarding the residual stormwater services functions that council will be expected to provide post reform and the powers to undertake those services require reinstatement, including development contributions, bylaws, and ability to construct works on private land.

The definition of the interface between the WSE stormwater network and council's transport stormwater system is not clear, providing challenges of determining stormwater infrastructure to transfer to the WSE and infrastructure that will be retained by council.

Our position is that further clarity and detail is required regarding stormwater infrastructure and service provision to provide confidence in ensuring a cohesive, effective, and efficient stormwater service is provided to our community.

4.8 Transfer of Asset and Debt Arrangements

To date, the approach in relation to the transfer of assets and debt arrangements has yet to be finalised. This is a function of the National Transition Unit, but we would like to highlight that this is still an area of concern for staff.

4.9 Government Funding Package Adequacy

To date, there is no confirmed approach to the establishment of 'No worse off' funding, definition of stranded costs or transition support funding post June 2023.

5 Submission Approach

The timelines given for submissions on this extensive Bill were short and did not allow for any form of public consultation with the Tauranga Moana community. We have relied on customer feedback previously sought in 2021 and 2022, along with the insight from subject matter experts.

In order to be able to do justice to this complex Bill, TCC commissioned a legal review by Simpson Grierson. This review was endorsed by the Water Services Entity B CEO's forum, and the report has been shared with the Entity

B Councils on the basis that we are all entitled to use the content as part of our own submissions. That review forms a large part of our joint submission (Section 2).

Te Rangapū also commissioned a specialist review in relation to the sections on the Powers to carry out work on Māori land. This review forms part of the joint submission (section

6 Industry Submissions

TCC support the submissions of the following key industry organisations:

1. Taituarā (and Development Contributions Working Group submissions in relation to infrastructure charges and their impacts on existing development and financial contribution systems).
2. Local Government New Zealand.
3. Water New Zealand.

7 Submission Sections

There are two further sections to this submission. Section 2 represents a joint submission by TCC and Te Rangapū. Section 3 represents Te Rangapū submission points.

MDuncan

Anne Tolley
Commission Chair
Tauranga City Council

Matire Duncan
Chair
Te Rangapū Mana Whenua o Tauranga Moana

Section 2:

Joint Submission of Tauranga City Council and Te Rangapū Mana Whenua o Tauranga Moana - Water Services Legislation Bill

Topic 1: Water Services Functions Remaining with Councils

Summary of Key Points

- Given the complications associated with the transfer of stormwater services to WSEs and the risk of a disconnect with land use planning which remains a council function, further clarity and detail is required and an extended timeframe considered.
- If stormwater function is transferred to WSEs, Bill should have clear statement of what water services functions remain with councils, which seem to be:
    - stormwater outside urban areas (although proposed section 261 of the WSEA envisages councils having urban stormwater networks)
    - transport stormwater systems
    - agricultural and horticultural (cf drinking) water
    - regulation of private drainage and nuisances
    - land drainage and flood control.
- Definition of *transport stormwater system* and interface with WSE's *stormwater network* (from which transport stormwater systems are excluded) is problematic and requires clarification
- Bill also needs to address combined sewers in the context of transport stormwater systems
- To support residual council functions the Bill needs to reinstate:
    - the power to require development contributions for agricultural water supply and stormwater drainage provided by the council
    - the power under section 181 of the Local Government Act 2002 (**LGA02**) to construct works on private land for stormwater (including transport stormwater systems)
    - express power to make bylaws relating to transport stormwater systems.
- Bill should include a clear statement of what private drainage functions continue to be exercised by councils
- Reconsider desirability and workability of Bill's proposal that councils continue to exercise certain Local Government Act 1974 (**LGA74**) private drainage functions, given their close connection to the WSE's functions
- Circumstances in which a council has to obtain WSE consent before exercising LGA74 powers is uncertain and only applies to stormwater (and not wastewater), rationale for this is unclear
- Proposed amendments to the Health Act 1956 do not include reference to wastewater but only to water supply or stormwater. The rationale for this is also not clear.

Discussion

Water services functions remaining with councils

1. The Bill would benefit from a provision which clearly states what water services functions may continue to be exercised by councils - either because they will not pass to WSEs or because councils may to some

extent still exercise the function alongside the WSE. At present it is necessary to determine this through a process of interpretation of the definitions in the WSEA, including the proposed amended definitions of "stormwater network" and "water supply", and by inference from other sections in that Act. This leaves uncertainty in this very important area.

2. For example, WSEs have the function of providing water services in their areas (section 13 WSEA), which are water supply, wastewater, and stormwater. The proposed amended definition of "water supply"[1] excludes water supplied for agricultural or horticultural purposes unless supplied by the WSE, and proposed amendments to the LGA02 (in Part 1, subpart 12 of the Bill) indicate that councils will still have the function of agricultural and horticultural water supply. However, this is not directly stated.

3. In the case of stormwater, the WSEA's definition of "stormwater network" is limited to WSE infrastructure in an urban area (although it includes an "overland flow path" as defined in section 6 – see further below). Therefore, the understanding is that stormwater outside urban areas will remain a council function, notwithstanding that the WSE's statutory stormwater function applies to its entire service area.

4. Other provisions in the Bill, for example proposed sections 260 and 261 of the WSEA, envisage that councils and CCOs may also own stormwater networks in urban areas (which may connect to or discharge into the WSE's network), and proposed amendments to council regulatory powers (e.g., the bylaw-making powers in section 146 of the LGA02 – see clause 99 of the Bill) are consistent with a general ongoing council role in relation to stormwater. Again, however, this is not express.

5. The Bill also proposes excluding "transport stormwater systems" from the definition of "stormwater network", presumably on the basis that these systems will remain the responsibility of the relevant transport corridor manager, although this is not stated either.

6. It would be helpful for the Bill to clearly set out what the respective roles and functions of WSEs, councils and transport corridor managers are in relation to stormwater, rather than this being left to interpretation. Such a statement would also help in interpreting other provisions which involve the use of powers relating to stormwater.

Relationship between transport stormwater systems and WSE's stormwater network

7. The definition of "transport stormwater system" (clause 5 of the Bill) and the interface between such a system and the WSE's stormwater network (from which transport stormwater systems are excluded) is problematic. The definitions need refinement to avoid practical problems and, potentially, disputes as to where responsibility lies.

8. To take an example, a road may discharge to a stream or drainage channel located within the road corridor. That stream / channel would presumably be "green water services infrastructure", and part of a transport stormwater system for which the transport corridor manager remains responsible, and not part of the WSE's stormwater network.

9. But at some point, along its length that drainage channel or stream may no longer be in the road corridor or part of the transport stormwater system and become part of the stormwater network for which the WSE is responsible. Under the Bill, this dividing line is unclear. This is in part because the definition of "transport stormwater system" refers to infrastructure *used* or operated by a transport corridor manager to drain or discharge stormwater *affecting* a transport corridor: i.e., the infrastructure (including green water services infrastructure) will not necessarily be located within the transport corridor. The same applies to overland flow paths, which could arguably be part of the "transport stormwater system" or part of the "stormwater network" and are expressly referred to in both definitions.

10. Under the definitions, in order for infrastructure to be part of the transport stormwater system, and excluded from WSE's stormwater network, it is sufficient for it to be a "process" used by a transport corridor manager to deal with stormwater "affecting" a transport corridor. There is no requirement that the infrastructure be located within the road corridor. Therefore, both upstream and downstream of the

1 This amendment proposes inserting a new paragraph (c) in the definition of "water supply", whereas there is already a paragraph (c). It is assumed the intent is to replace the existing paragraph (c).

road corridor, infrastructure could be regarded as part of the transport stormwater system if it is being used by the transport corridor manager e.g., to divert or manage the stormwater before it reaches the road, or to drain or treat it after it leaves the road.

11. As a related point, the Bill does not address the situation of combined (wastewater and stormwater) sewers and roads. It seems that if a combined sewer is located within a road and drains stormwater from that road it is part of the transport stormwater system, notwithstanding that councils and transport corridor managers do not otherwise have wastewater responsibilities. The position of combined sewers, and who has responsibility for them when located within a transport corridor such as a road, needs to be covered the Bill.

Whether responsibility for stormwater services should be transferred to WSEs at all, at least at this time

12. As illustrated by the above discussion, there are particular complications with transferring responsibility for stormwater services to WSEs which do not apply to water supply and wastewater. These difficulties do not seem to have been fully worked through in the Bill. It may be imprudent to transfer stormwater functions to WSEs at this time, without fully considering such matters.

13. Some components of the "stormwater network" as defined perform various functions not limited to stormwater e.g., urban streams also have an ecological and recreational function. Councils have a legitimate interest in continuing to be involved in managing and regulating such infrastructure. The same rationale for excluding transport stormwater systems (namely that roads in particular serve a dual transport and stormwater function) would seem to apply to them. See also paragraphs 39 to 46 below, in the context of stormwater management plans and rules.

14. In our submission the timing for the transfer of stormwater services needs be reconsidered. This should take place in the context of a full understanding of all of the implications of such a change, and how the proposed new system can operate effectively, side by side with council functions and responsibilites.

Council powers under the LGA02 and elsewhere relating to their residual water services functions

15. The Bill appropriately repeals council powers which will no longer be necessary once water services functions transfer to WSEs. However, in places it seems to 'forget' that councils will have some residual water services functions and will still need access to statutory powers for those purposes. Based on the discussion above (and ideally confirmed by a clear statement in the Bill) these residual functions appear to be:

    - Stormwater services and associated infrastructure, including transport stormwater systems;
    - Land drainage and flood control, to the extent this overlaps with stormwater;
    - Certain powers in relation to private drainage – in the Health Act 1956 and LGA74 (see immediately following sections of this submission); and
    - Water supplied for agricultural or horticultural purposes.

16. As such, the following powers (which the Bill proposes removing) should be reinstated:

    (a) the power to recover development contributions for the above infrastructure. Clause 106 of the Bill proposes replacing the definition of "network infrastructure" in section 197(2) of the LGA02 to read "the provision of roads and other transport (including transport stormwater systems)". It should include agricultural water supply and council stormwater infrastructure;

    (b) the power to construct works on private land in section 181 of the LGA02 should also extend to works considered necessary for stormwater (including transport stormwater systems) – refer clause 103 of the Bill.

17. The proposed amended bylaw-making powers in section 146 of the LGA02 (refer clause 99 of the Bill) do include powers relating to agricultural water and stormwater drainage, which is supported. However, it

would be desirable for this to expressly include transport stormwater systems, to remove any uncertainty.[2]

Powers under the LGA74 in relation to private drains

18. Council powers in relation to private drains (both wastewater and stormwater) are found in the LGA74. The Bill does not remove these powers but requires a council to obtain the WSE's agreement before exercising some of them (proposed new Part 25A LGA74). The Bill does not confer equivalent powers on WSEs.

19. The intent and effect of this new Part 25A, and in particular the residual role of councils in this area, is insufficiently clear. The Bill would benefit from a clear statement as to what LGA74 private drainage functions and powers councils are still responsible for exercising, and whether there is there a division of responsibility between council and WSE or an overlap.

20. Under the Bill, councils retain their powers relating to private drainage e.g., to require a property to be properly drained or to require separation of combined sewers, and WSEs do not. There is a question mark over how workable this will be given the very close connection to WSE's functions and responsibilities – i.e., private drains must connect into the WSE network and satisfactory provision of water services (by the WSE) depends on adequate private drainage as well.

21. Even if these powers are to stay with councils, the Bill does not include a mechanism for WSEs to request or require their use in appropriate circumstances. The Bill adverts to councils contracting with WSEs in relation to water services and LGA74 powers (new section 468A(3)), but it is doubtful whether such a contract could include regulatory matters such as the section 459 power to require private drains or the section 468(1) power to require tree root removal.

22. The threshold in the new section 439A of the LGA74 for a council to obtain the agreement of the WSE – if "a stormwater network or stormwater management plan would be affected" – is also problematic.

23. In the first place, the test is somewhat vague – when is the network or management plan "affected"? The exercise of private drainage powers can be controversial and opposed by landowners; uncertainty as to when WSE agreement must be obtained will add to the risk of challenge.

24. Secondly, the new section 439A of the LGA74 limits the WSE's role to stormwater effects, even though council private drainage powers apply to wastewater as well. It is unclear why this is the case.

Health Act functions in relation to water services

25. The proposed amendments to sections 33 to 35 of the Health Act, applying relevant provisions to WSEs, do not include reference to wastewater but only to water supply or stormwater drainage. Again, the rationale for this is not clear, as the nuisances in section 29 of the Health Act could also include wastewater issues.

More Detailed Recommendations

Provision	Recommendation	Reason
Clause 5, section 6 WSEA, definition of *transport stormwater system*	If intent is the restrict *transport stormwater system* to infrastructure within the road or other transport corridor, amend definition: (a) means the infrastructure owned or operated by, or the processes used by, a transport corridor manager to collect, treat, drain, store, reuse, <u>convey</u> or discharge stormwater ~~affecting~~ <u>in</u> a transport corridor; and (b) …	Greater clarity as to demarcation between transport stormwater system and WSE stormwater system. Addition of "convey" for completeness.

2 The opportunity could also be taken to tidy up section 146(a) which separately lists both "waste management" and "solid wastes", when these are the same thing.

Clause 99, amendment to section 146 of the LGA02	Amend section 146(b)(iv) as follows: …(iv) stormwater drainage, <u>including transport stormwater systems,</u> provided by the territorial authority…	For avoidance of doubt.
Clause 103(1), amendment to section 181(1) of the LGA02	Amend as follows: A local authority may construct works on or under private land or under a building on private land that it considers necessary for: (a) the supply of agricultural water; (b) <u>stormwater drainage, including transport stormwater systems;</u> (c) land drainage and rivers clearance	Necessary for section 181 powers to extend to all residual council stormwater infrastructure.
Clause 106, new definition of *network infrastructure* in section 197(2) LGA02	Amend as follows: **Network infrastructure** means the provision of roads and other transport ~~(including transport stormwater systems)~~, <u>agricultural water supply, and stormwater collection and management (including transport stormwater systems)</u>	Necessary for DC powers to extend to all residual council stormwater infrastructure.

Topic 2: Proposed Regime Strays into Land Use Planning

Summary of Key Points

- Bill should include a clear statement (in either the WSEA or the Bill's provisions) that WSEs are "plan takers", as opposed to "plan makers"
- Select Committee should reconsider the extent to which WSEs are empowered to develop and adopt plans, strategies and rules that overlap with land use planning and regulation, which is properly the function of councils
- Bill should make it clear that WSEs are required to comply with any applicable regional plan and district plan rules and adopted growth management and spatial planning strategies and plans
- Reconsider the definition of "urban area" to ensure that future development areas are not captured in WSE plans until such time as land is ready for release / development
- Bill lacks an integrated relationship with either the Resource Management Act 1991 or the proposed Natural and Built Environment Bill and Spatial Planning Bill.

Discussion

Plan-takers, not plan-makers

26. Through the development of the WSEA, the Select Committee report sought to clarify that the WSEs were to be "plan-takers", and not "plan-makers".[3] The outcome of this clarification was to amend clause 12(d) of the WSE Bill so that the section as enacted reads "support and enable <u>planning processes</u>, growth, and housing and urban development".

3 "Clause 11 sets out the objectives of WSEs. We consider that the bill should be clear that the entities' role would be to support planning processes as "plan-takers", rather than "plan-makers" (that is, territorial authorities would retain control over planning, and WSEs would give effect to their plans). To address this, we recommend amending clause 11(c) so that the objectives of WSEs include supporting and enabling planning processes, growth, and housing and urban development...." Water Services Entities Bill 136-2 (2022), Government Bill Commentary – New Zealand Legislation Water Services Entities Bill 136-2 (2022), Government Bill Commentary – New Zealand Legislation

27. Not only is there no discernible hierarchy within section 12 (which states the objectives of WSEs), there is no clear hierarchy within paragraph (d) of the section. The objective of supporting and enabling planning processes is placed on an equal footing with enabling growth, housing, and urban development, which does not give any precedence or greater importance to local authority urban growth strategies or plans.

28. The concern expressed through submissions on the first Bill remains live, and it would be an improvement to the Bill if there were a clear statement that the WSEs are not empowered to stray into "plan-making". In conjunction with this, there should be a clear requirement in the Bill that states that the WSEs must observe and adhere to any regional and district plans and strategies, rather than enabling and supporting planning processes only. Plan making should remain the responsibility of the territorial authority. This change could potentially be introduced into the operating principles of WSEs (in section 14 of the WSEA).

Overlap with land use regulation

29. The Bill empowers WSEs to prepare a wide array of documents, including controlled drinking water catchment areas and plans, stormwater management plans (**SWMP**s) and rules, water services assessments. The scope of these documents may extend beyond three water service delivery and into land use regulation, a core council function. This leaves the potential for overlap between the two, creating uncertainty in terms of land use regulation and enforcment, which is undesirable.

Controlled drinking water catchment areas and plans

30. Proposed sections 231 and 232 provide for the designation of a controlled drinking water catchment area, and the issue of a plan for any such area. There is no clear purpose statement for either matter, which would assist to clarify the scope of the powers.

31. A plan, issued under proposed section 232, is allowed to "set out prohibitions, restrictions, or requirements relating to activities that may be undertaken in the area" (see proposed section 232(2)(b)). This power directly engages with land use regulation, which is the role of councils under the RMA.

32. The Bill should make it clear that the ability to prohibit, restrict, etc any activities should be limited to the purpose of protecting the drinking water catchment as a water source. If expressed in that way, the potential overlap with land use regulation will be narrowed, which will assist with administration of any plan.

33. As drafted, it is not clear from the Bill how the provisions for establishing a controlled drinking water catchment area interact with regional and district planning rules, or the National Environmental Standards for Protecting Sources of Human Drinking Water. In the case of any conflict, a clear statement may be needed to provide those rules and standards with an RMA foundation will prevail.

34. With reference to proposed section 231, and the designation of catchment areas, there is no requirement for the WSE to give reasons for any designation. This should be addressed alongside a new purpose provision, that guides when and why designations should be made.

35. In addition, because any non-WSE owner will need to consent to both a designation and a catchment plan, there should be a requirement for the WSE Board to provide reasons in support of the exercise of its functions under sections 231 and 232.

36. There is also a drafting issue to address with proposed section 231. The wording used in that clause is that a WSE "may, by notice, designate". This language differs from that used in other legislation that confers powers to make declarations relative to land (e.g., Reserves Act 1977 and Public Works Act 1981). That other legislation typically provides for the issuing of "declarations by notice in the Gazette". As the same publication requirements are intended to apply, the wording in section 231(1) should reference the same "declaration" process. This change would also remove any confusion with the RMA concept of a designation (as the WSEs will be requiring authorities with those functions).

37. In order to improve administration, the proposed new section 232(5) should be amended to take into account the possibility that WSE assets may be located outside its service area.

38. We also note that proposed section 226 of the Natural and Built Environment Bill requires consideration of source water risk management plans under the Water Services Act 2021, when considering resource consent applications. There is a need to ensure alignment between all of the planning and existing legislative requirements relating to source water and drinking water catchments, and it would be beneficial for the terminology to be consistent.

Stormwater management plans and rules

39. The SWMPs provided for under proposed section 256 create the potential for WSEs to stray into land use planning and regulation. The Bill should be amended to clarify that a SWMP is not a regulatory document, and to require that any SWMP must be consistent with key documents in the RMA planning hierarchy e.g., spatial plan, regional plan, and district plan.

40. Of particular concern is the potential that an SWMP may include and set strategic intentions that will impact on later land use planning processes. The reason for this concern is that the proposed section 254 states that the purpose of a SWMP is to provide a WSE with "a strategic framework for stormwater network management". This wording is broadly expressed, and if given regulatory effect through stormwater network rules, may act to constrain urban policy planning, and growth strategies.

41. Proposed section 256 provides a further cause for concern in that it allows a SWMP to "state the outcomes that the water services entity wants to achieve". This again relates to policy matters and tends to suggest that the WSE is a plan maker rather than plan taker.

42. "Stormwater network" is defined in section 6 of the WSEA as meaning the "infrastructure owned or operated by, or processes used by, a water services entity to collect, treat, drain, store, reuse, or discharge stormwater in an urban area". The Bill proposes adding a definition of "urban area" to the WSEA that, by referring to land "primarily zoned, **or intended to be used for**, residential, industrial, commercial and mixed use, or settlement activities", would include land identified in district plans as "future urban". It is submitted WSEs should not have responsibility for stormwater services in these areas, which will not be "development ready". The provision of infrastructure to such land needs to be integrated and carefully managed by councils', rather than led by the WSE. Stormwater functions for future urban land should (which is typically rural) should remain with councils, consistent with the exclusion of rural zoned land from the proposed definition of urban area.

43. We note that proposed section 255 requires that a WSE "must" comply with its stormwater management plan. This mandatory direction could prove problematic if the SWMP contains detailed policy and outcomes that must be adhered to. Unless there is a requirement for the WSEs to adopt and follow existing RMA planning undertaken by councils, there is no certainty that the SWMP process will not conflict with other forms of strategic planning.

44. Similarly, the provision to make stormwater rules in proposed section 260 does not have a clear relationship with RMA planning documents, yet it provides an ability to set restrictions, requirements, conditions on discharges and works in certain areas, and set quality standards for discharges. Clarification of this relationship is particularly important given the clear intention that stormwater rules are to have regulatory effect. Section 260 lacks any purpose provision, or link to the SWMP which provides the foundation for the rules. This disconnect should be addressed.

45. Proposed section 260(2) states that certain stormwater rules "may not conflict with or restrict the rights or obligations of landowners or road owners under section 221 or 222". However, those two sections are in themselves misconceived insofar as they allow a landowner or road owner to "require" the WSE to move water services infrastructure. As discussed below, landowners and road owners should not be given "rights" or obligations under these sections, let alone rights / obligations that prevail over stormwater rules.

46. Proposed section 262 requires engagement with councils when making stormwater rules, but there is no legislative direction that addresses alignment between rules and existing RMA planning methods. If the WSEs are to be empowered to make rules in this way, the Bill should be amended to include a specific purpose for any rules, and a requirement to remain consistent with rules under the RMA and the future Natural and Built Environment Act.

Water services assessments

47. In relation to water services assessments, planning for the water services needs of communities should be closely linked to the planning activities undertaken by councils, for example planning for urban growth and the potential managed retreat from coastal inundation. This link is necessary to achieve coordination between key stakeholders, and avoid inefficiencies created by non-integrated planning. There is a clear need for greater council participation in water services assessments than simply being invited to 'participate' (proposed section 247).

48. Although section 247(2)(d) proposes that an assessment could be carried out by a council on behalf of the WSE, most councils will no longer have the appropriate staff resources to carry out a full assessment. That said, council planning staff should play a key role in this process.

49. There would be benefit in the Select Committee ensuring that the water services assessment process is aligned with planning processes under the RMA, and the processes that are proposed to be introduced through the Natural and Built Environment Bill and Spatial Planning Bill (currently being consulted on), which are intended to replace the RMA.

50. In particular, the 'access' assessment should be formally linked to the regional spatial strategy process, to achieve collaborative input on general community needs, and specifically adopt a shared set of assumptions (about population growth and changes etc) that would be used by both councils and WSE.

Interplay between RMA processes and the Bill

51. In general, there is a lack of integration between the functions and powers conferred on the WSEs and the RMA and its processes. The Select Committee should ensure that the WSE's functions complement those of the council, in its regulatory or consent capacity, rather than potentially creating tension between them. One example of tension is through the three-stage approval process for connections, which provides the WSEs with a broad power to approve a number of aspects associated with new connection applications. To the extent that those aspects capture design, and integration with existing environments, it is considered that they extend into the realm of council's functions under section 31 of the RMA. It would be helpful for the Bill to clearly set out what the respective roles and functions of WSEs are in relation to such approvals, relative to councils, so that there is reduced scope for disagreement between these two key stakeholders.

Concerns with the inclusion of stormwater more generally due to its inherent relationship with land use planning

52. Land use planning, especially for councils with high growth and development needs, will be further complicated with the requirement for development and joint interpretation of land use plans across the WSE's service region. This is especially so with stormwater services, as multiple infrastructure services are involved, both within councils and WSEs. How any misalignment of these plans, either in substance or timing, will be addressed is not clear. Without such alignment there is a risk of investment not occurring when required and severely impacting on the ability of TCC to provide land for growth and development in a timely and co-ordinated manner. TCC's position is that further clarity be provided on the hierarchical priority and alignment process of land use related plans.

More Detailed Recommendations

Section of WSEA	Recommendation	Reason
Section 6	Amend (b) in the definition of urban area so that it does not include any area notified by a territorial authority to the WSE under section [x] and provide a corresponding section giving territorial authorities that notification power. Alternatively, delete in (b) the words "or intended to be", so as to exclude future urban zoned land from the definition of "urban area".	Reduce potential demand on councils to develop land and allow councils to plan infrastructure provision in future urban zoned land.

Sections 13/14	Add function and / or operating principle that WSE's must observe and adhere to existing RMA planning rules and strategies.	Consistency with Select Committee findings.
Section 231	Add purpose statement for controlled drinking water catchment areas.	Clarity and to improve operation.
Section 231	Relabel designation to 'declaration' and include a requirement to provide reasons for making a designation. Amend the wording in section 231(1) to refer to "may, by notice in the Gazette, declare the following"…	Reduce litigation risk. Clarity of terminology.
Section 232(5)	Amend s232(5) to add the underlined wording: "(5) When developing a controlled drinking water catchment plan, the board of the water services entity must engage with the territorial authorities, regional councils, mana whenua, consumers, and communities in (and where appropriate outside) the service area of the entity in accordance with section 461."	Clarify position where assets are outside WSE service area.
Section 256	Amend this section to *establish a relationship between SWMPs and local government planning processes and include a requirement that they be consistent with these plans.*	
Section 260	Add a purpose statement for stormwater network rules.	Clarity and to improve operation.

Topic 3: WSE Powers to Carry Out Works on Land (Part 6, sections 200 to 230 WSEA)

Summary of Key Points

- Water services infrastructure and WSEs are materially different from private utility operators (such as gas, electricity and telecommunications):
    - water supply and wastewater services are essential to life, with potentially significant public health implications, if necessary, works are delayed;
    - WSEs are public or quasi-public bodies, with public accountabilities;
    - compared to other utility operators, WSEs will have greater recourse to statutory powers because of specific locational requirements e.g to rely on gravity, and because existing infrastructure is often on private land, dictating the location of repairs, maintenance and replacement.
- Proposed Part 6 powers, based on legislation applying to private network utility operators, are not fit for purpose and will risk significant delays and costs in obtaining approval
- Instead, Part 6 should replicate existing council powers and processes for works on land in LGA02
- Provide greater statutory guidance as to what are "reasonable conditions", including confirmation that issues of compensation are excluded and addressed under a separate process
- Remove the rights of appeal from a District Court or Maori Land Court decision under Part 6, and provide that those Courts' decisions are final. Note the specific Te Rangapū submission points within Section 3 below
- Provide a fairer costs regime where a road owner requires water services infrastructure in the road to be moved, including WSE responsibility for costs if the infrastructure is or has become dangerous or unsafe.

Discussion

Works on private land - WSE regime based on private utility provider model

53. The model adopted in the Bill is largely based on that applying to gas, electricity, and telecommunications providers under their respective Acts. This is not the appropriate model for WSEs, given the nature and location of the infrastructure which will be vested in them, the significance of the services which they will provide, and the public or quasi-public nature of the WSEs themselves.

54. WSE powers to carry out works on land must be fit for purpose, which means a regime which is much closer to that currently applying to councils.

55. Key differences between the rights and processes applying to councils (in section 181 and Schedule 12 of the LGA02) and that proposed for WSEs are:

- under the Bill, the onus is on the WSE to obtain "approval" from the District Court if an owner does not consent or imposes unreasonable conditions cf under the LGA02 it is the landowner who must appeal. In the case of new works, this applies even if the landowner does nothing at all in response to a notice. This reversal of the practical onus together with delays of District Court referral will place significant practical impediments on WSE works being approved and carried out in a timely fashion;
- the requirement that works can only proceed in accordance with a landowner's reasonable conditions (unless modified by District Court on appeal) assumes that landowners will be equipped to determine what is "reasonable" and advise accordingly. But in many private situations landowners will have no experience of such matters and what is or is not likely to be justifiable. Nevertheless, the process will be delayed while the WSE is required to take the matter to the District Court.

56. Overall, this is likely to result in a significantly greater number of works having to be approved by the District Court, either following an application by the WSE or an appeal against unreasonable conditions. This will mean increased delay and cost, negatively impacting on the speed and efficiency in delivering water services infrastructure.

57. There are various reasons why water services are not just "another utility" like gas or telecommunications, and therefore justify a bespoke approach.

58. First, the relative importance of water services, as compared to, say, telecommunications, is self-evident, and illustrated by the Water Services Act and the WSEA themselves. Efficient and effective water supply and wastewater services are essential to life, with significant public health implications if they are impaired, which includes where necessary works are delayed.

59. Secondly, WSEs (unlike gas, electricity, or telecommunications providers) are quasi-public bodies, with detailed public accountabilities. In that regard they are more akin to councils than to private companies.

60. Thirdly, there are unique characteristics of water services networks which mean a greater potential need for recourse to statutory powers as compared to other utilities. The existing networks which WSEs will assume responsibility already, in many instances, pass through private land. This determines the location of repairs, maintenance, or replacement of that infrastructure, but that layout also influences the location of future works, as do other practical requirements unique to water and wastewater e.g the reliance on gravity wherever possible (for engineering, cost, environmental and resilience reaons) to convey water, wastewater, and stormwater.

61. The fact that WSEs will need to use the statutory processes more than other utility operators counts in favour of a more streamlined procedure. The existing LGA02 procedure is familiar, and while not perfect, is satisfactory in most cases, and is an appropriate model.

62. Using a regime which more closely mirrors the existing LGA regime would not mean any reduction in the protection of private rights – the WSE would still need to justify its position before the District Court if necessary. But the altered process would reduce the risk of unnecessary delays because of landowners who either choose not to participate at all or who act unreasonably.

63. Even if (contrary to what is submitted above) the powers and processes in proposed Part 6 are broadly retained, there are some specific aspects which require further consideration:

(a) under proposed section 200(5)(a), the WSE's powers to carry out works on someone else's land does not apply to Crown land. This is a significant limitation for which there is no obvious justification - if anything, Crown land should be regarded as more suitable for WSE works than private land. It is submitted that section 200(5)(a) should be deleted;

(b) it would be valuable for the Bill to confirm that "reasonable" conditions may not relate to questions of compensation, which is a separate issue dealt with elsewhere (proposed section 218) if that is the intent. Experience shows that reaching agreement about works on private land can often founder on the issue of compensation, even if not strictly relevant because the legislation provides for full Public Works Act compensation under a separate process;

(c) the subpart 5 appeal rights from the District Court or Māori land Court (proposed sections 227, 228 and 2306 to 230) are too extensive. The matters being referred to those Courts, either be application or appeal, are essentially factual in nature, involving an assessment of the necessity of the works in that location, the impact on the landowner and the reasonableness of conditions. This is suitable subject matter for the District Court or Māori Land Court, as the case may be, and the Bill should provide that the decision of those courts is final. At present, under Schedule 12 of the LGA, the District Court's decision is final.

WSE infrastructure on roads (subpart 2)

64. WSEs are given powers to carry out works in roads. WSEs will become "utility operators" (clause 184 of the Bill) and therefore the regime in the Utilities Access Act 2010 (**UAA**), including the Code of Practice under the UAA and the identification of reasonable conditions, will apply.

65. Proposed section 222 of the WSEA addresses the situation where the road owner or transport corridor manager requires the water services infrastructure in the road to be moved. This provides that the reasonable costs of such work are payable by the road owner or corridor manager. This could work unfairly if the need for the alteration or removal is something which is the WSE's responsibility e.g., if the infrastructure is or becomes dangerous or unsafe.

66. It is recommended that section 222 be amended to more fairly reflect where the costs should lie in various scenarios. A useful model may be section 147B(2) of the Telecommunications Act 2001.

More Detailed Recommendations

Provision of WSEA	Recommendation	Reason
Sections 200(2), 210, 202, 203	Replace with process modelled on LGA02 section 181 and Schedule 12. In particular, put onus on the landowner to challenge proposed works / conditions in the District Court, not on WSE to obtain District Court approval.	Significantly limits WSE performance.
Section 200(3) [if not replaced as submitted above]	Clarify scope and subject matter of possible "reasonable conditions", including that issues of compensation are excluded.	Current wording greatly increases likelihood of landowner imposing unmeritorious conditions - necessitating lengthy and costly court process.
Section 200(5)(a)	Delete	Excluding Crown land as site of potential works unduly limits WSE's ability to choose best location.

Section 226 to 230	Delete appeal rights to High Court, Court of Appeal, Supreme Court, and Māori Appellate Court in sections 227, 228 and 230. Provide instead that decisions on applications or appeals to District Court or Māori Land Court are final.	Public interest in relatively short process and finality. District Court and Māori Land Court well equipped to decide issues.

Topic 4: Connection to Water Services Infrastructure (Part 10, sections 288 to 317 of the WSEA)

Summary of Key Points

- Provide express statutory linkages between 3-step water services connection approval process and relevant resource and building consent application processes, in order to encourage and facilitate coordination and procedural efficiencies
- Authorise WSEs to delegate to councils the power to exercise their Part 10 approval powers, to allow for a "one stop shop" in appropriate cases
- Enact transitional provisions which preserve existing engineering plan approvals and approval conditions, and addressing approval processes which are in train but not completed as at establishment date.

Discussion

Linkage to and coordination with other consent processes

67. The three-stage WSE infrastructure connection process will frequently occur at the same time as resource and / or building consent processes. There is passing reference to this in the Bill (e.g., the validity of WSEA approvals may not exceed the expiry date of "any applicable resource consent or building consent"), but in general it is silent on the linkage between the processes and how the Bill can promote and achieve efficient coordination between them.

68. While some matters between the WSE and councils can be covered in relationship agreements, this will not always be the case, as such an agreement cannot affect an applicant's statutory rights.

69. To give an example, it is not clear whether a resource consent or building consent could be put "on hold" pending the applicant producing a stage 1 approval under the WSEA; or vice versa. There is a possible scenario where neither the WSE nor the consent authority may want to be the first to give approval, because its exercise is dependent on the other consent. The Bill should address such situations and provide for appropriate coordination.

70. At present, territorial authorities grant all three approvals, including engineering plan approval for water and wastewater infrastructure that is to vest in them. This simplifies the procedural and documentation requirements, supports coordination of the timing of the various steps, and enables a holistic approach to be taken. There is a risk of these benefits being lost if the Bill has a 'silo' approach, focusing solely on approval for connection to WSE infrastructure, and without regard for the other consents which will be required as part of the same development or activity.

71. Under the Bill, there is no express ability for a WSE to allow a council to authorise approval on its behalf or in its place, which will limit the ability of WSEs and councils to collaborate on their consenting services in the interests of efficiency for all. Some examples where a WSE and a larger council are likely to find this flexibility desirable include:

    (a) having an efficient streamlined single point of approval for simple developments (including simple connections);

    (b) efficient on-site inspection services for straightforward development (this relates to the stage 3 approval step);

    (c) in respect of vesting under the proposed section 317, having a single point of acceptance for developed land i.e., sufficient flexibility to operate a cohesive vesting process (water services infrastructure and other asset classes - notably roading - together), avoiding situations where say

pipes are vested, but other infrastructure is not and vice versa (this relates to Stage 3 approval step). As per the earlier discussion, it may be unclear as to whether, say, green water services infrastructure such as bioretention vests in the WSE as part of the stormwater network, or vests in the territorial authority or other road controlling authority as part of a transport stormwater system. A single process to align timing of acceptance can assist developers, WSEs and councils.

72. A WSE Board's powers to delegate (section 87 of the WSEA) are limited to "internal" delegations, and we are not aware of any power for a WSE to transfer functions to a council. However, especially in this context of approvals to connect, it would be useful to provide for the possibility of delegations to councils, in order to facilitate a more efficient "one stop shop" for related consents / approvals.

Transitional issues

73. The Bill does not contain any transitional provisions carrying over relevant engineering plan approvals existing at the establishment date, preserving ongoing approval conditions (e.g., vesting requirements) or addressing approval processes which are in train but not completed. These will need to be added.

More Detailed Recommendations

Provision of WSEA	Recommendation	Reason
New	Add provisions which provide for linkages between water services connection consent process and RMA and Building Act consent processes.	Will encourage and facilitate coordination and procedural efficiencies.
New	Add a power for WSE to delegate 3 – step approval decision-making to councils.	More efficient and cost effective.
New	Include transitional provisions continuing existing engineering plan approvals, conditions and approval processes which have been commenced.	To help to ensure smooth and workable transition.

Topic 5: Water Services Charges (Part 11, sections 318 to 350 of WSEA)

Summary of Key Points

- Cost sharing between WSEs and councils for information in the rating information database should be based on Rating Valuations Act formula
- Consider adding a consultation or engagement obligation before a WSE sets charges. At the very least the WSE should engage with the regional representative group
- Require WSE charging decisions to be in accordance with its funding and pricing plan
- Broaden the charging principles in proposed section 331 of the WSE to enable charging decisions to take into account matters such as:
    - the affordability of the charges to consumers or groups of consumers;
    - the need for or desirability of incentivising consumer behaviour;
    - the extent to which consumers or groups of consumers are causing or contributing to the need for particular services or the costs of that service (this may be relevant to trade waste charges in particular);
    - the administrative costs and benefits to the WSE of uniform vs differentiated charging;
    - the overall impact on consumers and communities.
- Clarify whether the section 331 mandatory considerations are exclusive or inclusive
- Provide a closer link between sections 331 and 334, in particular to confirm that the charging principles do not limit the power to charge geographically averaged prices

- Delete proposed new section 133(3)(a)(vii) which says that a GPS may include expectations as to geographic averaging, on the basis that this inherently risks being directory contrary to section 117
- Align liability for trade waste charges with the holder of the trade waste permit (if there is one) rather than the occupier of the property
- Confirm that volumetric wastewater charging may be calculated based on volume of water supplied
- Remove the option of WSEs being able to charge councils for stormwater services in lieu of direct charging of their consumers, until 1 July 2027. If the option remains, confer specific rating powers on councils to recover the relevant expenditure and enact timing requirements to enable accommodation within normal council planning and financial cycles.

Discussion

Sharing of rating information by councils

74. The Bill provides (proposed sections 319 and 320 of the WSEA) that councils must give WSEs information from the rating information database (**RID**) that the WSE reasonably needs to charge its customers. This information must be provided on "a reasonable cost basis". There is no further guidance as to what a "reasonable cost basis" would be, including whether it encompasses just the cost of extracting and providing the information, or also the cost of the information itself.

75. Much of the information in the RID will be derived from the district valuation roll (**DVR**) prepared under the Rating Valuations Act 1998 (**RVA**). That DVR information is used by both territorial authorities and regional councils and section 43 of the RVA contains a formula for the sharing of costs in its preparation (if not otherwise agreed), which depends on the respective rates revenue generated by the councils and the costs incurred in preparing and maintaining the particular information required by the regional council.

76. It would be fair for WSEs to likewise share in the costs of the preparation of the relevant information in a manner proportionate to their revenue which is received through the use of that information, otherwise councils will be subsidising the operating costs of WSEs. It is therefore submitted that proposed section 319 be amended to make it clear that WSEs can be required to pay a share of the costs calculated on a specified basis - the same or similar to section 43 of the RVA. This would obviously be subject to the parties agreeing otherwise.

Process for setting charges

77. There is no requirement for WSEs to consult or otherwise engage before setting charges (other than infrastructure contributions) under proposed section 330 of the WSEA. This will be quite a significant change: presently, customers of councils are consulted on proposed rates / charges, and Watercare engages with its shareholder, Auckland Council, prior to new customer charges coming into force at the start of each financial year.

78. At the very least, it is submitted that a WSE should be required to engage with its regional representative group prior to fixing charges.

79. In addition, to provide greater accountability and predictability in its pricing, WSEs should be required to make charging decisions which are in accordance with its funding and pricing plan.

Charging principles

80. The Bill contains charging principles in proposed section 331 of the WSEA, which are mandatory considerations when setting charges. There are several issues with this section.

81. First, the section does not state whether the list of charging principles is exclusive, or whether the WSE is able to consider, and take into account, other matters as well. As section 331 is likely to be the focus of any legal challenge to water services charges (similar to challenges to development contributions or rates under the LGA, based on alleged non-compliance with statutory provisions), it is important to clarify this.

82. Secondly, the principles are far too narrowly drawn (this point is especially important if the principles are exclusive). WSEs should be able to set charges taking into account the range of considerations which councils may presently consider when setting rates for water services.

83. In line with the statutory objectives of WSEs in section 12 of the WSEA, the principles should allow WSEs to set charges taking into account:

- the affordability of the charges to consumers or groups of consumers;
- the need for or desirability of incentivising consumer behaviour (for example, reduced water consumption);
- the extent to which consumers or groups of consumers are causing or contributing to the need for particular services or the costs of that service (this may be relevant to trade waste charges in particular);
- the administrative costs and benefits to the WSE of uniform vs differentiated charging;
- the overall impact on consumers and communities.

84. It may be noted that at present, broader considerations such as these must be taken into account by local authorities when determining how water services they provide are to be funded: LGA02, section 101(3).

85. The principles currently say (proposed section 331(1)(a)(ii)) that different groups of consumers should only be charged differently if they receive different levels or types of service, or if the cost of providing the services to those groups is different. This is too restrictive – for example affordability is a recognised and generally accepted basis for charge differentiation. The example given after section 331(3), which refers to "commercial" and "residential" charges, seems to assume that such differentiation is possible, whereas this would be contrary to the section 331(1)(a)(ii) principle (assuming the level, type and costs of the service provided to these groups, such as the provision of drinking water, are identical).

86. Thirdly, there is a question mark about the relationship between the charging principles and the geographic averaging authorised under section 334. The use of geographic average pricing is supported, as it can smooth and share costs across a WSE's service area despite differences in the actual cost of servicing different communities in that area, and thereby aid vulnerable customers.

87. Arguably, however, geographic averaging is inconsistent with the charging principles. The Bill therefore needs to contain a closer link between sections 331 and 334, and in particular provide that the charging principles do not limit the power to charge geographically averaged prices.

88. Clause 13 of the Bill will amend the list of Government "expectations" which may be contained in a GPS to include "geographic averaging of residential water supply and residential wastewater service prices across each water services entity's service area". This is much more specific than the other matters listed in section 133 of the WSEA which may be included in a GPS.

89. The proposed new section 133(3)(a)(vii) relating to expectations as to geographic averaging in a GPS is not supported. It goes too far, potentially breaching the prohibition on directions being given to WSE in a GPS or other document found in section 117 of the WSEA.

Mechanics of charging / liability for charges

90. Proposed section 321(3) of the WSEA refers to the occupier being liable for trade waste charges in respect of a property that has a trade waste permit. However, under sections 266 to 268 a permit can be applied for by a person who "owns or occupies trade waste premises in the entity's service area" and the permit is issued to that person, not a property. The person liable for trade waste charges should be the permit-holder (if there is one), rather than (by default) the occupier.

91. Proposed section 329, which relates to volumetric charging, refers to charging by reference to water meters. As wastewater meters are still uncommon, it may be appropriate to add to section 329(3) a statement that a WSE may charge for a consumer's volumetric use of wastewater services based on a specified percentage of the water supplied to the consumer as measured by the water meter. This is to

avoid arguments that absent wastewater metering, wastewater charges cannot be proven to be volumetric.

WSE charging councils for stormwater until 1 July 2027

92. Between 1 July 2024 and 1 July 2027, a WSE may charge a council for stormwater services provided within that council's district, if the WSE is not charging customers directly (proposed clause 63 of Schedule 1 to WSEA).

93. This provision is opposed in principle: a WSE is providing services to its customers, not to the council, and it ought to be charging those customers in its own right, from its establishment date. The expedient of using the council as a convenient way to meet the costs is contrary to the principles of the WSEA and the LGA02, lacks transparency and is unfair to councils who then have to somehow recover the costs without having any responsibility for or relationship with the services in question.

94. It is also unclear how the provision would work in practice. The Bill gives no specific power to councils to rate to recover the costs, or puts in place any timing requirements to enable that to be accommodated within a council's normal funding and financial planning cycle.

95. If the Bill continues to allow WSEs to bill councils for stormwater instead of their customers, it should be accompanied by a specific authority for councils to rate to recover those costs, perhaps on a prescribed basis in order to reflect the fact that the council is being used as a conduit for recovering charges on behalf of the WSE. A precedent for this type of approach is section 34 of the Local Government (Auckland Transitional Provisions) Act 2010, pursuant to which Auckland Council was required to set a prescribed wastewater rate in order to meet Watercare's wastewater revenue requirements, and to transfer the money received from that rate to Watercare.

More Detailed Recommendations

Provision	Recommendation	Reason
Clause 13, amended section 133 of the WSEA	Delete proposed section 133(3)(a)(vii) (in relation to geographic averaging).	Risks being impermissibly directory.
Section 319 of the WSEA	Amend section 319 as follows: (3) The local authority must provide the rating information- ~~(a)~~ as soon as is reasonably practicable after receiving a request from the water services entity.~~; and~~ ~~(b) on a reasonable cost basis~~. (4) <u>The water services entity must pay the local authority a share of the costs of preparing and maintaining the relevant information in the rating information database, calculated in accordance with the formula in section 43(3) of the Rating Valuations Act 1998 (applied with all necessary changes), or such other amount as is agreed between them.</u>	Fairer contribution to council's costs.
Section 321 of the WSEA	Replace subsection (3) with the following: The person liable to pay trade waste charges in respect of a property is: (a) the holder of the trade waste permit if there is one;	Fairer targeting of liable party for trade waste charges and easier administration for WSE if there is a permit.

	(b) if there is no trade waste permit, the occupier.	
Section 329 of the WSEA	Add new subsection (3)(c) as follows: calculate the volumetric use of wastewater services based on a reasonable proportion of the volume of water supplied to the consumer.	For clarification.
Section 330 of the WSEA	Add new subsection (3): A charge set by the board must be consistent with its funding and pricing plan. Add new subsection (4): Before setting a charge the board of a water services entity must engage with the regional representative group. Add to section 461(1): (ka) **section 330** (relating to setting of charges).	Inappropriate for charges to be set without any consultation or engagement. Engagement with RRG is a bare minimum.
Section 331 of the WSEA	Broaden the charging principles as set out above in submission. Amend subsection (4) as follows: Subsection (1) does not override section 333 <u>or section 334.</u>	Current proposed section 331 limits ability of WSE to meet its statutory objectives. Amendment to subsection (4) is for clarity.
Clause 61, Schedule 1	Amend subsection (1) as follows: Despite anything in Part 11, a water services entity may adopt and use the existing tariff and charging structures of the relevant ~~territorial authority or authorities~~ <u>local government organisations</u>.	Enables continuation of Watercare charges.

Topic 6: Infrastructure Contribution Charges (Part 11, sections 343 to 350 of the WSEA)

Summary of Key Points

- Use accurate and consistent terminology to ensure clarity as to when particular requirements apply, i.e. *adopt* the IC plan and thereby *set* the charges in the plan; *require* or *impose* the ICs in particular cases; *invoice* the ICs. Amend some provisions accordingly (in particular proposed sections 343 and 345)
- Confirm that the general charging principles in proposed section 331 do not apply to Ics
- Consider whether service connections are a sufficient trigger for the charging of infrastructure contributions by WSEs, and potentially remove the building and resource consent triggers. If the building consent and resource consent triggers are retained, provide for WSE to pay actual and reasonable costs to Territorial Authorities for the transfer of resource and building consent information as this is likely to be a burdensome task
- Consider amending the IC Policy requirements to include information about the period over which the capex will be incurred and identification of the anticipated assets or programmes of works to which the capex relates
- Provide that the consultation report relating to the IC Policy also cover engagement with councils, consumers, mana whenua and communities
- Provide that the subject matter of relationship agreements may or should include the provision of information from councils to WSEs, and coordination of processes, relating to ICs

- Remove provisions in proposed section 349 allowing 50-year period over which ICs can be paid, including by purchasers as opposed to developers
- Confirm directly that the person liable for any ICs is the owner of the property, and that the general liability provision in proposed section 321 does not apply to ICs
- Ensure WSEs can collect infrastructure charges to recoup the cost of a local government organisation's capex where that capex continues to provide capacity for growth (eg the building of a new water treatment plant with capacity for future generations), through an amendment to proposed section 343(2). Currently, post 2027 transition period, WSEs seem to be limited to infrastructure charges only being able to cover capex they have or intend to incur themselves.
- Note the widespread use of developer agreements by Territorial Authorities instead of or in addition to the use of development and financial contributions including for the funding and delivery of waters services, and consider if this needs to be specifically addressed in the Bill.

Transitional issues with DCs and FCs

- Ensure that the provision allowing WSEs to adopt the water services components of a Territorial Authorities Development Contributions Policy until 2027 (clause 60) provides for the adoption of a Development Contributions Policy prior to its amendment under proposed clause 65 removing a territorial authority's power to require contributions for water supply or wastewater services infrastructure
- Reconsider (in proposed clause 60) how financial contribution systems that deal with payments for water services will work in the interim – these are set under District Plans under the RMA and present additional complexities that mean they are unlikely to be able to be adopted and implemented by WSEs for an interim period to 2027
- Unclear what clause 62, Schedule 1 requirement for councils to transfer "unpaid or unaccounted for" DCs or FCs means
- A simpler "first principles" approach would be that on establishment date:
    - DC and FC revenue held by councils relating to water services infrastructure transfers to WSEs
    - The right to collect unpaid DCs and FCs for water services infrastructure transfers to WSEs.
- Councils should also retain proportion of DC and FC revenue relating to infrastructure which will not transfer i.e. agricultural water supply, relevant stormwater (outside the urban area), and transport stormwater systems
- Ensure provisions that enable the efficient amendment of Territorial Authorities Development Contributions Policy also cover stormwater responsibilities that transfer to WSEs (currently only cover water and wastewater) Schedule 1 - Clause 65
- Councils should also retain powers to impose DCs and FCs for these activities cf clause 65, Schedule 1.

Discussion

"Setting" ICs

96. The Bill's approach to ICs is broadly based on the development contributions regime in subpart 5 of Part 8 of the LGA02, however some important aspects have not been adequately translated to the WSE context. In particular there is a need to address some of the terminology in the Bill, for clarity and in order to properly reflect the principles underpinning ICs.

97. There are three main steps in the IC process:

    (a) Step 1: an IC Policy is *adopted.* Adopting the policy will *set* the ICs contained in the Policy (at the abstract level);

    (b) Step 2: ICs are *required* or *imposed* in the particular case, applying the IC Policy;

(c) Step 2: those ICs are *invoiced* to the property owner.

98. Rather than using the terminology in (a) and (b) above, the Bill tends to use the word *set* throughout. This is confusing because it is sometimes unclear which step is being referred to. Further, if "set" is intended to refer to Step 1, then in some cases it is incorrect, because the relevant requirement should apply at Step 2, when particular ICs are required or imposed, and not (just) when adopting the policy.

99. Applied to the specific proposed sections, this means:

(a) section 343 – this is modelled on section 199 of the LGA02 and applies at Step 2 – it is a prerequisite to requiring contributions in the particular case. The section should therefore say *require* or *impose* rather than *set*. The cross-reference to section 343 in section 344 should make the same change;

(b) section 344 – this covers both Step 1 and Step 2. The reference to *adopts* at Step 1 is correct. The reference to *sets* at Step 2 should be changed to *requires*. The reference to "setting" in the heading can probably remain as it can broadly cover both adopting the policy and requiring the charges in a particular case;

(c) section 345 – this also applies at Step 2 rather than Step 1, and it should say *require* or *impose* rather than *set.* The IC Policy at Step 1 will contain a statement of the discounts available for demand mitigation measures – see section 346(2)(e) – and section 345 then applies when the particular ICs are imposed;

(d) section 346 – this is Step 1. The Bill says *set or adopt*; it should simply say *adopt*;

(e) section 349 – this is Step 3. The Bill could be clearer that the ICs being referred to are those already required or imposed at Step 2, i.e., it is strictly limited to the timing of the invoicing and other technical payment issues.

Other aspects of IC regime

100. Section 343(2) is modelled on section 199(2) of the LGA02 but fails to recognise that the growth related capital expenditure whose cost needs to be recouped through ICs may have been incurred by a local government organisation before the establishment date (most likely 1 July 2024), as opposed to the WSE after that date. This is because it refers to "capital expenditure already incurred **by the water services entity**". Section 343(2) needs to be amended to ensure developers who create the need for and benefit from additional capacity installed by a local government organisation before 1 July 2024, pay for a share of that capital expenditure through ICs.

101. On the face of it, the charging principles in proposed section 331 would seem to apply to ICs (as ICs are a category of charge listed in section 330). There is no express exclusion as in section 334 for geographic averaging. However, it is questionable whether it is necessary for the section 331 principles to apply to ICs, or indeed how they apply, given the purpose and nature of ICs, and the fact that section 344 already contains principles specific to ICs. It is submitted that section 331 should not apply to ICs.

102. The Bill is not consistent on whether it is mandatory for WSEs to have an IC Policy. Proposed section 346 of the WSEA says it is: the board "must…adopt" an IC Policy. However, section 343(3) refers to "any" IC Policy and section 344 says "if" an IC Policy is adopted. This needs to be clarified.

103. An IC policy must include much of same information as in a council DC policy under the LGA02 (proposed section 346 of the WSEA), but there is no requirement to specify the period over which the capex will be incurred. Nor is there any requirement to identify the anticipated assets or programmes of works to which the capex relates. In both respects, the IC regime is less rigorous than that presently applying to councils – even though WSEs will have less direct public accountability.

104. Councils know from experience that requiring clear identification of expected capex and its timing is an important discipline in the development and justification of DCs, and accountability to developers and landowners who have to pay the charges. The Select Committee may wish to consider incorporating these elements into section 346.

105. Section 347(1)(c) requires the preparation of a report on the consultation undertaken on a proposed IC Policy. This could be interpreted as referring only to the consultation under subsection (1)(b) and excluding the engagement under subsection (1)(a) – which includes councils, consumers, mana whenua and communities. Section 347(1)(c) should be amended to refer to the consultation *and engagement* undertaken.

106. The Bill provides that the Crown is exempt from paying ICs (section 348). We oppose this provision, which would extend not only to the "core" Crown (Ministers and government departments) but also to schools and Crown entities like Kāinga Ora – Homes and Communities, which may by legislation be given the privileges of the Crown.[4] There is no good reason for such an exemption, which results in the Crown not paying for the demand it generates for water services infrastructure, and local developers and their communities unfairly subsidising the general taxpayer. Even territorial authorities, who are the public owners of the WSEs, will be liable to pay ICs and it is likewise reasonable for the Crown (and Crown entities) to pay their fair share towards the costs of any growth which it has necessitated.

107. A WSE's charging of ICs, including coordination of invoicing with the statutory events in proposed section 349, will depend in part on its knowledge of council processes, in particular resource and building consents. The Bill does not expressly address practicalities in that regard e.g., provision of information from councils to WSEs, or coordination of processes. In practice there will need to be a high degree of cooperation and information sharing between the WSEs and councils. It may be desirable to specifically refer to this issue in the IC context as part of the subject matter of relationship agreements in proposed section 468 of the WSEA.

108. Proposed section 349 allows agreements for unpaid ICs to be paid off in instalments over a period of up to 50 years. While interest is payable, this type of extended payment arrangement could defeat the purpose of ICs which is to fund the impact that a development has in terms of requiring additional capital expenditure. That impact arises as soon as a development starts "consuming capacity" in water services networks. Despite the deeming provision in section 349(4), lengthy repayment periods are also likely to give rise to recovery difficulties when properties are sold.

109. We also question whether it is fair and reasonable for the proposed section 349(4) to require the new owner of a property to pay unpaid ICs: this is not currently the case with DCs or IGCs, and it is primarily the land developer (rather than the first or a subsequent purchaser) who benefits from the provision of infrastructure that allows the new property to be developed and serviced. Further, the ongoing costs of paying off the IC may in practice be unaffordable for a homeowner, when combined with water services charges payable to the WSE and local authority rates. If despite this submission section 349(4) remains, there should at least be a requirement for the unpaid IC to be registered against the land under the Land Transfer Act 2017, so that an intending purchaser of a property has notice of the liability.

110. It seems from section 349 that the person liable for any ICs is the owner of the property. It would be desirable for the Bill to state this directly, rather than indirectly in section 349.

111. It is also necessary to make it clear that the general liability provision in section 321 does not apply to ICs. As ICs are a form of water services charge (section 330) on the face of it section 321 would apply unless it is excluded.

Transitional matters relating to ICs (proposed clauses 60, 62, 64 and 65 of Schedule 1 to WSEA)

112. Proposed section 350 is clear that councils cannot, after the establishment date, charge or use DCs or FCs relating to water services infrastructure. The transitional provisions in Schedule 1 seem to comprehend a total wash-up of DCs and FCs as at the establishment date, with no on-payments to the WSE after that date. However, in some respects the Bill may not be workable or is unclear.

113. Under proposed clause 62 of Schedule 1, on the establishment date "any unpaid and unaccounted for" DC or FC in respect of water services infrastructure which was required by a council must be transferred to the relevant WSE. There is a lack of clarity as to what "unpaid and unaccounted for" contributions

4 See for example s39 of the Housing Act 1955 which applies to Kāinga Ora

mean, or how they are determined; what happens to DCs or FCs invoiced by a council but not yet been received, or paid but not yet spent, as at the establishment date; or how this regime applies to Watercare IGCs.[5]

114. A simpler "first principles" approach would be that on establishment date:

- DC and FC revenue held by councils relating to water services infrastructure transfers to WSEs;
- the right to collect unpaid DCs and FCs for water services infrastructure transfers to WSEs.

115. Councils should retain a proportin of DC / FC revenue relating to infrastructure which will not transfer i.e. agricultural water supply, relevant stormwater(outside the urban area), and transport stormwater systems.

116. Councils should also retain powers to impose DC / FCs for these categories of network infrastructure, which they may still provide. The requirement that councils amend existing DC and FC policies to remove any power to require a contribution for water supply or wastewater services infrastructure (proposed clause 65 of Schedule 1) is therefore too broad: contribution policies should be able to retain provisions relating to agricultural water supply and stormwater, including transport stormwater systems (so long they are being provided by the council).

117. Clause 65 should also refer to removing relevant FC provisions in a district plan (and not just the contributions policy), because the power to "require" FCs is really under the RMA and district plan and not directly in the section 102 policy. The same "by resolution" process should apply.[6]

118. Clause 65 should include and reference stormwater services. It is currently worded to include only water supply and wastewater services.

More Detailed Recommendations

Provision	Recommendation	Reason
Section 321 of the WSEA	Add new subsection (5) as follows: This section does not apply to infrastructure contribution charges.	For clarification.
Section 331 of the WSEA	Add new subsection: (4A) This section does not apply to the setting of infrastructure contribution charges.	For clarification.
Section 343(2) of the WSEA	Amend subsection (2) as follows: This section does not prevent the board of a water services entity from setting water infrastructure contribution charges that are used to pay, in full or in part, for capital expenditure already incurred by the water services entity, <u>or a local government organisation before the establishment date</u>, in anticipation of development or increased demand.	To ensure developers who create the need for and benefit from additional capacity installed by a local government organisation before 1 July 2024, pay for a share of that capital expenditure through ICs.
Section 343 of the WSEA	Heading – replace "set" with "require" Subsection (1) – replace "set" with "require" Subsection (2) – replace "setting" with "requiring"	More accurate and consistent terminology.

5 Proposed clause 50 anticipates the possibility, in Auckland, of FCs being transferred to the Northern WSE after the establishment date, which seems inconsistent with the principle underlying the other DC and FC transitional provisions.

6 The reference in clause 65(2)(b) of Schedule 1 to section 106(2) of the LGA02 in the context of amending a contributions policy appears to be in error.

Section 344 of the WSEA	Subsection (1) – replace “sets” with “requires”	
Section 345 of the WSEA	Heading – replace “set” with “require” Subsection (1) - replace “set” with “require”	
Section 346 of the WSEA	Heading – replace “set or adopt” with “adopt” Subsection (1) – replace “set or adopt” with “adopt”	
Section 349 of the WSEA	Add words to subsection (1): A water services entity may invoice a person who owns property in its service area for water infrastructure contribution charges <u>required under section 343</u> when…	
Section 343 of the WSEA	Amend subsection (3) as follows: All water infrastructure contribution charges must be consistent with ~~any~~ <u>the</u> policy adopted under section 346.	Consistency.
Section 344 of the WSEA	Amend subsection (1) as follows: ~~If~~ <u>When</u> the board of a water services entity…	Consistency.
Section 347 of the WSEA	Amend subsection (1)(c) as follows: produce a report on the <u>engagement and</u> consultation undertaken,…	For clarification.
Section 348 of the WSEA	Delete.	Unreasonable for Crown to be exempt.
Section 349 of the WSEA	Add new subsection before present subsection (1): The person liable to pay infrastructure contribution charges is the owner of the property to which the development or the increased demand relates.	For clarification.
Section 349 of the WSEA	Change reference to “not exceeding 50 years” in subsection (2)(b) to a lesser period.	More in keeping with the purpose of ICs.
Section 349(4) of the WSEA	Delete.	Unfair for purchaser of property to assume liability for unpaid IC.
Clause 65 of Schedule 1	Amend subsection (1) as follows: This clause applies in relation to a policy on development contributions or financial contributions adopted by a territorial authority <u>and a district plan prepared under the Resource Management Act 1991</u>. Amend subsection (2) as follows: Each policy <u>or plan</u> must be amended to remove any power of the territorial authority to require a development contribution or a financial contribution for water supply or wastewater services, <u>or stormwater services</u> infrastructure,… …	Relevant district plan FC provisions must also be removed. The power to require DCs and FCs must continue for residual council infrastructure.

	(b) the amendment is not required to be made ~~as described in section 106(2) of~~ using the process in the Local Government Act 2002 or the Resource Management Act 1991: … Add new subclause (3) as follows: Subclause (2) does not apply a requirement in a policy or plan to pay a development contribution or a financial contribution for agricultural water supply or any stormwater services infrastructure (including transport stormwater systems) provided by the territorial authority.	

Topic 7: Council Collection of Charges/ Pass-Through Billing (sections 336 to 338 of the WSEA)

Summary of Key Points

- Council collection of WSE charges risks causing consumer confusion about who is responsible for providing water services
- CE of WSEs "may authorise" councils to collect on behalf and "reasonable steps" taken to enter agreement, but there is no clear basis for a Council to refuse
- Guidance on the assessment of "reasonable compensation" to be paid to the Council should be provided and the power for the Minister to determine terms removed
- The proposed "pass-through billing" may not be practicable because:
  - If it covers the full range of possible WSE charges, the timing / process may not align with council billing processes and capacity
  - It will place additional resource pressure on councils.

Discussion

119. Proposed section 336 provides that a WSE "may authorise" a council to collect charges on behalf of the WSE, and the chief executive of a WSE and the council "must take all reasonable steps" to enter into a charges collection agreement. The agreement must provide for "reasonable compensation" to council, and the Minister determines any terms where the parties are unable to agree.

120. It appears councils are being required to provide billing services for the WSE. The basic power in section 336(1) to "authorise" a council to collect charges, must be preceded by reasonable steps to agree (section 336(2)). Therefore, by implication, it seems councils are required to agree, particularly as the Minister will decide terms if the WSE and council cannot agree. As such, the wording "may authorise" appears disingenuous.

121. Councils may not have the capacity to provide this service to the WSE. They may need to employ additional or temporary staff to do so, but at the same time the WSE will be competing for the same human resources to help set up their systems. We submit that councils should have the ability to refuse to accept authorisation to enter into an agreement.

122. There is also concern about whether the full range of possible WSE charges are to be covered in a collection agreement, including IC charges, and whether the liable entities and timing will align with current council billing processes and capacity. The WSE should carry the risk of council resources and systems not being able to do what the WSE might want. This will need to be a term in the agreement.

123. Where a council agrees to be a collection agent, there is the potential for confusion about who is responsible for water services, if councils are still doing the billing. This can be reduced if, say, councils are required to issue invoices clearly showing it is a WSE charge. Unless WSE invoices and payments are kept entirely separate, councils may favour their own funding needs if a payer pays an "untagged" amount that could cover both council and WSE charges, or pays an amount that is insufficient to cover both WSE charges and council charges. The legislation does not specify, in the event of partial payment of this type, whether local authority or WSE charges have priority.

124. There is also the potential for arguments about what is "reasonable compensation", which could be reduced through the provision of guidance material about the type of matters that can be included. While matters such as postal costs, IT and other administration costs such as reading of meters are likely to be included would "compensation" cover improvements to council systems that might be required to address the different types of charges, or the employment of temporary staff to manage the new charges and system?

125. The final decision about compensation could then be for the council to determine, based on the guidance, and is not something that needs to be decided by the Minister. The addition of a dispute resolution process could assist where there is disagreement on terms between the WSE and the council.

More Detailed Recommendations

Section of WSEA	Recommendation	Reason
Section 336	Amend section 336(2) to delete "Before relying on subsection 1…." and replace it with: "If the local authority or authorities agree to be authorised under subsection 1…." Add a requirement for guidance on the assessment of reasonable compensation.	Councils need control over whether they carry out this service or not.

Topic 7: WSE Rates Exemption (clause 137; section 142 of the WSEA)

Summary of Key Points

- Intent seems to be that WSE land will be non-rateable, however proposed amendment to Schedule 1 of the Local Government (Rating) Act does not correspond to current wording, and so this is unclear
- If the Bill does propose non-rateable status for WSE land, it is strongly opposed. WSE land and WSEs are not inherently deserving of non-rateable status, and councils should not be financially supporting WSEs through preferential rates treatment
- Likewise, the provision granting non-rateable status to WSE infrastructure on roads (or other third party land) is unjustified and should be removed.

Discussion

Non-rateability of WSE infrastructure

126. It appears the Bill's intent is to make land owned by WSEs non-rateable. This conclusion is not certain because the relevant provision in the Bill (clause 137) proposes an amendment to the Schedule of non-rateable land in the Local Government (Rating) Act 2002 (**LGRA**) - adding a new clause 3(3)(e) - which does not correspond to the current LGRA and seems to be in error.

127. If the Bill does propose non-rateable status for WSE land, then it is strongly opposed. There is nothing about land used for water services which qualifies it for non-rateability - it is not of a nature or type which naturally brings it within the categories of non-rateable land in the Schedule. The same land used for the same purposes and presently owned by councils or their CCOs is fully rateable, and there is no good reason for removing that status, and depriving councils of much needed rates revenue, simply because the assets are transferring to WSEs.

128. Granting non-rateable status is also inconsistent with the statutory principle of financial independence of WSEs, in particular the prohibition on council owners giving their WSE financial support (section 171(1)(c) of the WSEA). An exclusion from paying rates is, in substance, a form of financial support. Councils should not be subsidising WSEs.

129. The same comments are made in relation to proposed section 342 of the WSEA, which makes WSE infrastructure such as pipes, when in or on another's land such as roads, non-rateable. This treats WSE infrastructure differently to other network infrastructure e.g., telecommunications, gas, and electricity pipes or lines, all of which is rateable when fixed in, on or under the road.

130. There is no good reason for giving WSE infrastructure special rates treatment, and doing so is inconsistent with its financial independence, as set out above. Section 342 is therefore opposed.

More Detailed Recommendations

Provision	Recommendation	Reason
Section 342 of the WSEA	Delete.	WSEs should be fully rateable.
Clause 137, amendment to Schedule 1 of the Local Government (Rating) Act 2002	Delete.	WSEs should be fully rateable.

Topic 8: Bylaws and Rules / Instruments

Summary of Key Points

- The WSE Board has power to adopt existing Council bylaws as new instruments but no engagement is required, if the application and effect of the instrument is the same, even though modifications can be made. The WSE should be required to consult with councils if modifications are made
- WSEs need the power to adopt resolutions made under bylaws, to avoid deficient or ineffective regulation of bylaw matters
- Health Act bylaws may also need to continue or alternatively be amended or revoked using the same procedure being provided for LGA02 bylaws
- Definition of "spent water services bylaw" refers to section 146 LGA02, but the position needs clarification where a bylaw is made under both sections 145 and s146.

Discussion

131. Clause 56 of proposed new part 2 to Schedule 1 of the WSEA provides for the WSE Board to make certain instruments during the establishment period (which are not effective until the establishment date). This includes the power to adopt (with or without change) existing water services bylaws to become new stormwater network rules, trade waste plans, water use restrictions, or other instruments under WSE's new powers. The normal engagement requirements do not apply provided the "instrument applies to the same area and has the same material effect as the existing bylaw".

132. While these provisions will facilitate the transition, it is not clear how easy it will be to make modifications to and consolidate bylaws to become workable instruments. If there is no requirement to engage with councils and communities how can the WSE be certain that modifications or consolidation will have the same material effect? We submit that the WSE should consult with the relevant council regarding modifications to instruments.

133. We submit that the Board's ability to adopt existing bylaws should also extend to adopting resolutions made under section 151(2) LGA02.[7] These resolutions often contain the specific detail of the regulation provided under the bylaw. If these are not also transferred to the WSE then the bylaw regulation will be deficient.[8]

134. Under proposed clauses 66 to 70 of Schedule 1, councils must amend or revoke bylaws relating to water services if they are satisfied the bylaws have ceased to have effect (and consultation is not required). Generally, a council will be satisfied a bylaw has ceased to have effect where a function has shifted to a WSE, but it may not always be straightforward to make this assessment, especially where a bylaw has a section 145 LGA02 (nuisance, public health, and safety) rationale as well. This is an area where the national transition unit could usefully provide guidance.

135. However, it seems to be an oversight that there is no equivalent provision applying to Health Act bylaws, even though there may be bylaws made under that Act that may still have effect for councils in relation to their remaining functions. Councils may still make bylaws regulating private drainage.

136. The revocation provisions in proposed clause 68 cover resolutions under section 151(2) LGA02, unless otherwise provided under the WSEA. However, consents, permits and authorisations (including trade waste consents) issued under spent bylaws continue in force for specified periods of time. As some consents, permits etc may have been made by section 151(2) resolution, the effect of the revocation of any such resolutions should be clarified.

137. "Spent water services bylaws" are defined as those made under section 146 LGA02 relating to water services. However, some bylaws are made under other provisions as well (e.g., section 145 LGA02), and it would be helpful to clarify the position where bylaws are also made under that power.

138. It is also not clear whether proposed clause 66 captures council trade waste bylaws as a spent water services bylaw. While there are inferences trade waste is part of water services (for example, in the proposed section 330 charges can be set for "wastewater services, including trade waste services"), this matter should be clarified to avoid any doubt.

More Detailed Recommendations

Clause of Schedule 1 of WSEA	Recommendation	Reason
56	Add a requirement for consultation with councils on all instruments that adopt bylaw provisions, to confirm any modifications and that an instrument has the same material effect as the bylaw. Add a provision for the WSE board to also adopt resolutions under section 151(2) made in relation to any existing bylaw.	Consistency and reduce litigation risk.
66 to 70	Amend clause 66(3) to cover bylaws relating to water services made under the Health Act 1956. Consider whether clause 66(3) should also refer to bylaws made under section 145 of the LGA02. Ensure that trade waste bylaws are clearly covered as a spent water services bylaw.	Consistency and to avoid doubt.
68	Add a further provision to clarify that although a s151(2) resolution is revoked any consents, permits	To avoid doubt.

7 Section 151(2) provides that "a bylaw may leave any matter or thing to be regulated, controlled, or prohibited by the local authority by resolution either generally, for any specified classes of case, or in a particular case".

8 We note that reference is made to the revocation of section 151(2) resolutions in caluse 68, in the context of spent water services bylaws.

	etc approved under a section 151(2) resolution are not revoked.	

Topic 9: Trade Waste (Part 6, subpart 3, sections 266 to 273 of the WSEA)

Summary of Key Points

- Requirement for all trade waste discharges to be authorised by a permit (section 270) imposes unnecessary compliance costs. Instead, trade waste plan should be given a greater role in setting relevant requirements
- Trade waste plan should be able to allow specified discharges (with or without conditions), obviating need for permit unless specific conditions are required
- Offence provisions (sections 397 and 398) should be recast accordingly to recognise role of trade waste plan in permitting or prohibiting discharges
- Bill should specifically allow for trade waste plans to have different requirements in different parts of the WSE's service area
- Subpart should recognise or provide for trade waste agreements in lieu of trade waste permits. Existing trade waste agreements must be continued in force in the Bill's transitional provisions
- Liability for trade waste charges should sit with the permit-holder (if there is one) rather than the occupier
- To improve enforceability and effectiveness, a "compliance requirement" as defined in clause 5 should include a provision in a trade waste plan or in a trade waste agreement.

Discussion

Authorisation to discharge trade waste / trade waste plan / trade waste permit

139. The Bill's approach is to make the "trade waste permit" the sole means of authorising trade waste discharges (proposed section 268 of the WSEA). This will impose unnecessary complexity and compliance costs, as well as an administrative burden on the WSEs, because it will require all trade waste discharges to be authorised by a permit.

140. Instead, the Bill should give WSEs greater flexibility by allowing for a level of authorisation simply through the trade waste plan, with or without conditions, and without the need for a permit. A plan should also be able to specify prohibited discharges. This is the approach taken in some existing council trade waste bylaws.

141. The plan could for example provide that a specified level of trade waste discharge (e.g low risk discharges from food services premises) is authorised, subject to compliance with stated conditions (for example in the case of food services premises, installation of a grease trap). Proposed section 270(2) of the WSEA, which says that a trade waste plan may specify the classes of waste or material that are not trade waste, expresses a similar idea; however, it is not the *type* of waste but compliance with an appropriate condition (e.g. use of a grease trap or sink strainer) that justifies exemption from permit requirements.

142. Unless a discharge is entirely prohibited, the issue is then what (if any) conditions should attach to the discharge. Section 270 refers to trade waste plans needing to specify which activities will be allowed, subject to restrictions, or prohibited *under a permit*. There is no need for a permit to allow (without restrictions) or prohibit activities – a trade waste plan should do that. The sole purpose of a permit is to *allow a discharge of trade wastes subject to conditions.*

143. Under this approach, there will be a need for far fewer permits. Much of the "heavy lifting" can be in the plan itself. Section 268 will need to be amended accordingly, to provide that discharges must be in accordance with the trade waste plan and any trade waste permit.

144. The offence provisions (proposed new sections 398 and 399) will also need to be recast to recognise role of the trade waste plan in permitting or prohibiting discharges.

145. Proposed section 270, dealing with the content of trade waste plans, refers to *activities* which are allowed, permitted etc. It would be more apt to refer to *discharges.*

146. Some treatment plants are better equipped than others to accept trade wastes, which may mean different requirements or standards for discharges. This may have wider implications as well – at present some councils take advantage of this by trying to attract wet industry through appropriate trade waste standards, while others may have particularly senstive receiving environments, or have wastewater treatment plants of other infrastructure that are unable to handle significant wet industry or types of trade waste, and so are happy to discourage this. Trade waste policy may therefore be relevant to broader environmental, social, cultural and economic wellbeing.

147. As this dynamic could play out within a WSE's area (and potentially influenced through the RRG and the statement of strategic and performance expectations under section 139 of the WSEA), it would be useful if section 270 confirmed that a trade waste plan may be different in different parts of the WSE's service area.

Trade waste agreements

148. The Bill does not recognise or provide for trade waste agreements. These are commonly used at present in place of trade waste permits.

149. Subpart 3 should therefore provide that:

- WSEs may enter into trade waste agreements, in lieu of compliance with the trade waste plan;
- a trade waste agreement prevails over any inconsistent provision of a trade waste plan.

150. The WSE's general approach to trade waste agreements and when they will be used could be included as a component of the trade waste plan under section 270.

151. The Bill's transitional provisions should also continue in force all existing trade waste agreements, which it does not at present. Such agreements should be treated as deemed trade waste permits granted under the WSEA.

Liability for trade waste charges

152. Proposed section 321(3) refers to the occupier being liable for trade waste charges in respect of a "property that has a trade waste permit". However, under sections 266 to 268 a permit can be applied for by a person who "owns or occupies trade waste premises in the entity's service area" and the permit is issued to that person. The person liable for trade waste charges should be the permit-holder, if there is one, rather than (by default) the occupier.

Enforcement

153. The definition of "compliance requirement" in clause 5 of the Bill, as it applies to trade waste, is too narrow. It does not include a provision in a trade waste plan. This means a compliance order cannot be issued for such breaches.

154. This significantly reduces the enforcement options and therefore effectiveness, especially if (as submitted above) it is the trade waste plan rather than the permit which will establish the compliance obligation in many cases. The provision should also reflect the need to comply with trade waste agreements (if these are going to be recognised under the Bill).

155. Accordingly, paragraph (c) of the definition of "compliance requirement" should be changed to "a trade waste plan, trade waste permit or trade waste agreement" (the definition should also cover water usage restriction rules and rules regulating customer behaviour).

More Detailed Recommendations

Provision	Recommendation	Reason
Clause 5, definition of *compliance requirement*	Amend (c) as follows: A trade waste plan, trade waste permit or trade waste agreement: Add: • A water usage restriction rule • A rule regulating consumer behaviour.	Improved enforceability by including all sources of possible trade waste obligations.
Section 268 of the WSEA	Amend as follows: **Persons may discharge trade waste into wastewater networks only if complying with trade waste plan and trade waste permits.** A person may discharge trade waste into a wastewater network only if the person complies with every requirement, condition, and limit specified in the relevant trade waste plan and any relevant trade waste permit.	More efficient approach.
Section 270 of the WSEA	Amend subsection (1) as follows: A trade waste plan must specify – (a) which ~~activities~~ discharges ~~will be~~ are allowed ~~under a permit~~; and ~~(b)~~ which ~~activities~~ discharges ~~will be~~ require a permit ~~be subject to restrictions under a permit~~; and ~~(c)~~ any ~~activities~~ discharges that ~~will be~~ are prohibited ~~under a permit~~; and (d) the water services entity's intended approach – (i) to ~~issuing permits for~~ regulating trade waste discharges over a 5-year period, including the approach to classes of trade waste, trade waste premises, and trade waste carriers: (ii) to determining the requirements, conditions, and limits that are to apply to different classes of trade waste ~~under trade waste permits~~: (iii) to determining the qualification, training, and supervision requirements that are to apply to persons who ~~are granted~~ discharge trade waste ~~permits~~: (iv) to determining the considerations that are to apply when the water services	More efficient approach.

	entity sets fees or charges in relation to trade waste <u>and trade waste</u> permits.	
Section 270 of the WSEA	Amend subsection (2) as follows: A trade waste plan may: (a) specify the classes of waste or material that are not trade waste: (b) <u>specify different requirements, conditions, limits, or other matters in different parts of the water service entity's service area.</u>	Desirable to expressly recognise possible differentiation within area.
New sections following section 273	Add the following: *Trade waste agreements* (1) A water services entity may enter into a trade waste agreement with any person who may apply for a trade waste permit under section 266. (2) A trade waste agreement prevails over any inconsistent provision of a trade waste plan.	Bill needs to take into account trade waste agreements.
Section 321 of the WSEA	Replace subsection (3) with the following: The person liable to pay trade waste charges in respect of a property is: (a) the holder of the trade waste permit, if there is one; (b) if there is no trade waste permit, the occupier.	Fairer targeting of liable party for trade waste charges and easier administration for WSE if there is a permit.
Section 397 of the WSEA	Amend heading and subsection (1) as follows: **Discharging trade waste ~~without trade waste permit~~ <u>contrary to trade waste plan</u>** (1) a person commits an offence if the person discharges trade waste into a wastewater network <u>contrary to a trade waste plan (including</u> without a trade waste permit issued under section 267 <u>when the plan requires such a permit)</u>.	Bill needs to take into account trade waste agreements.
New clause 70A of Schedule 1	Add a clause which continues any trade waste agreement in force immediately before the establishment date.	Bill needs to take into account trade waste agreements.

Topic 10: Engagement / Involvement with Local Authorities

Summary of Key Points

- The amended functions of the WSEs (in section 13 of the WSEA) are proposed to include "to partner and engage with its territorial authority owners", but many provsions in the Bill and Act are inconsistent with or even undermine that function
- The Bill's definition of "engagement" does not make it clear what effective or meaningful engagement / consultation means in relation to decision-making

- The principles set out in proposed section 462 are inadequate insofar as they only apply to WSE engagement with *consumers*
- There is no clear feedback loop requring the WSEs to respond to any feedback provided by the WSE's council owners or others who have been consulted
- Overall, there is insufficient certainty that council owners will be able to influence WSE decision-making, particularly when the decisions intersect with remaining council functions
- The Bill fails to set out how WSEs will engage with mana whenua, being the other group (alongside territorial authorities) with whom WSEs are required to partner (under the new section 13)
- The Bill relies heavily on relationship agreements to inform the working relationship between the WSEs and other key stakeholders, but the relevant provisions are incomplete, do not provide for any transfer of functions or delegation, and are unenforceable (when they may need to be enforceable in certain cases)
- There should be a statutory dispute resolution process for the development of relationship agreements, and in relation to any disputes that arise between the parties.

Discussion

Provisions (especially in relation to the GPS) inconsistent with effective partnership

156. Clause 7 of the Bill proposes to replace section 13 of the WSEA with a wider set of functions, including a function to "partner and engage with its territorial authority owners". While the Councils support the intent behind this change, and the express acknowledgement that territorial authorities will remain the "owners" of the WSEs, it is not clear on the face of the Bill that there is any mechanism or process that reflects this partnership when the WSEs are seeking input into decision-making processes.

157. The vast majority of the decision-making functions conferred on the WSEs require "engagement" with councils or local government organisations, but there is no clear ability for those parties to influence the decisions made by WSEs.

158. It is assumed that the primary mechanism by which council owners are expected to exert influence over the WSEs is via the key documents in Part 4 of the WSEA: in particular, the statement of strategic and performance expectations and the statement of intent. Under section 140, the board of a WSE "must give effect to" the statement of strategic and performance expectations when performing its functions.

159. However, the status of the statement of strategic and performance expectations as the primary direction-setting document for a WSE is undermined by the ability for the Minister to issue a GPS that is broad ranging in its content (see section 133), and the requirement in section 136 that a WSE "must give effect to" any GPS when performing its functions. In short, it may be impossible to give effect to both a GPS and the statement of strategic and performance expectations, where those documents set different priorities or are inconsistent with one another. As wider aspects of the public interest are safeguarded through the economic and health and environmental regulation (by the Commerce Commission and Taumata Arowai respectively) there can be no justification for "central government" in the broadest sense having any residual power to set direction for the WSEs in a way that undermines local ownership and control.

Inadequacy of engagement requirements and principles

160. While properly recognising "partnership", the Bill should provide for a greater level of council involvement in relation to WSE decisions that will or could, directly or indirectly, overlap with council functions. As described in topic 2 above, there is a clear overlap between the functions and powers of the WSEs and spatial / land use planning, and this should require far greater council involvement than mere "input" or "feedback".

161. Proposed sections 461 and 462 (currently sections 206 and 209 respectively) require engagement in relation to certain matters and decisions, and prescribe principles of engagement with "consumers". They do not apply to engagement with any other stakeholders.

162. In the proposed section 461, the definition of engagement requires that a WSE or the Minister do either or both of the following before deciding on a matter:

(a) Consult on proposal:

(b) Seek input, on an iterative basis, during the formulation of a proposal, or feedback on a proposal.

163. There is no elaboration on what is meant by "consult", and clause (b) is expressed as an either / or alternative. This is inadequate, and should be amended to provide greater clarity around how the WSEs should engage with all stakeholders. In the absence of more detail in the Act, this will almost inevitably be the focus of disagreement and potentially court determination, which is obviously undesirable.

164. As a comparison, the LGA02 provides for several different forms of consultation, with principles that guide (whenever a council consults) how a council is to both consider and respond to feedback received. In almost all cases in the Bill, there is no provision requiring the WSEs to respond in writing, or via reporting, to any feedback given by councils, mana whenua, consumers or other stakeholders, and so there is no closing of the feedback loop at all. WSEs will be making decisions that affect each of these stakeholders, and it should be clear to them how WSEs considered their views before making decisions.

165. In order to partly address this issue, section 14 of the WSEA could be amended to include a new principle that requires the WSEs to be open and transparent with decision-making, and which requires the WSEs to respond – in general terms – to feedback received through consultation.

Engagement principles are generic, and do not reflect the key stakeholder status of local government

166. Proposed section 462 sets out "principles of engagement with consumers". The Bill does not include any separate principles that govern the relationship between the WSE on one hand and local government and mana whenua on the other (except to the extent that they are consumers). This is clearly inadequate.

167. Local authorities and mana whenua are the most important stakeholders for the WSEs, which is reflected in the proposed reference to a WSE's function of "partnering" with both territorial authority owners and mana whenua in the amended section 13 of the WSEA. This should also be recognised through a more specifc set of principles applicable to local authorities and mana whenua that ensures their views are given due consideration, with additional opportunities for the WSEs and local authorities and mana whenua to discuss material issues before any decision is made.

168. The above commentary highlights the potential significance of some WSE decisions to council land use decision-making, planning and regulation, and this that warrants a more developed engagement relationship. There is a place for a separate "principles" provision, that enshrines a more extensive relationship between the WSEs, local authorities and mana whenua ahead of decision-making, to ensure that any feedback is given meaningful attention, and responded to directly.

169. The Councils support the provisions in the Bill that require specific engagement with local authorities for some decisions or policy documents e.g. water supply assessments and stormwater management plans. However, there is no clear rationale for not requiring consultation with councils in all processes (including when they are not consumers of the WSEs).

170. By way of comparison, the principles in section 82 of the LGA02 apply to any consultation that a local authority undertakes, not just consultation with one particular group. The lack of any express principles applicable to WSE engagement with stakeholders other than consumers – over and above the very limited matters set out in section 461(4) – creates risk of a "lesser" form of consultation with stakeholders as compared toconsumers.

Transitional engagement – a lack of certainty

171. Proposed clause 76 of Schedule 1 of the WSEA treats any engagement that takes place between councils and the DIA / NTU before the establishment date, on a matter that requires engagement or consultation under the WSEA (as amended by the Bill), as qualifying as engagement or consultation (presumably for the purposes of any relevant statutory requirement, once enacted).

172. There is both a lack of certainty with this provision, and a lack of clarity with when it may apply. This creates a risk, particularly for councils, who may not have fully understood when they were being "consulted" on any matter.

173. While clearly a transitional provision, the reason for this provision remains unclear. If it is to remain in some form, it should be amended to ensure that DIA / NTU state when any pre-engagement will constitute engagement for the purposes of the WSEA, so that councils know that they should take appropriate advice as to the outcome that the WSE is pursuing.

Inadequate control over WSEs due to limited power to remove directors

174. Notwithstanding changes made to the WSEA through its Parliamentary stages, concerns remain about the lack of genuine accountability of WSEs (including with the new subsidiaries as discussed below) to their council owners. In particular, unlike with a council CCO, there is no provision in the WSEA for council owners of the WSE to remove directors of the WSE.[9] Section 70 of the WSEA allows the board appointment committee of the RRG to remove directors for "just cause", which is defined as including "misconduct, inability to perform the functions of office, neglect of duty, **and breach of any of the collective duties of the board or the individual duties of members** (depending on the seriousness of the breach)". While the definition is inclusive not exclusive, even the words in bold are unlikely to allow removal for failure or refusal to implement the direction set by the RRG through the statement of strategic and performance expectations.

175. Section 70 of the WSEA should be amended by this Bill to allow the RRG to direct the board appointment committee to remove board members where there is just cause. It should also add breach of the WSE's duty under section 140 to give effect to the statement of strategic and performance expectations to the definition of "just cause" for removal of a director under section 70(4). This would bring the council owners of a WSE *closer* to the level of control they have in respect of CCO directors who fail to meet shareholder objectives set out in the statement of intent, who are subject to section 95 of the LGA02.[10] The level of control would still be less, however, as the RRG comprises both territorial authority and mana whenua representatives.

Relationship agreements and service level agreements (sections 467 - 469)

176. The Bill relies heavily on the agreement and success of relationship and service level agreements between the WSEs, councils and other stakeholders.

177. While this method is commonly utilised by councils, the concern is that these agreements can be difficult to implement without ongoing negotiations, amendments and disputes.

178. There will be benefit in DIA / NTU requiring that individual agreements are entered into with councils, and also benefit in providing standard terms to apply across all relationship agreements (particularly with councils), for national consistency, and to ensure all councils and WSEs can take a 'best-practice' approach to any issues that arise.

179. The matters that may be addressed in relationship agreements appear to be incomplete. It would be appropriate to include, as mandatory content, the following matters: customer response, community engagement, implementation of strategic planning, and environmental monitoring. We refer above to IC charges; see paragraph 105, and note other matters that cannot be covered in such agreements (see our comments at paragraph 67).

180. We also note that if the RMA reforms are progressed, there may need to be relationship agreements with the regional planning committees.

181. The lack of enforceability of relationship agreements, in their entirety, is a further area of concern. While relationship agreements are, generally, non-enforceable, given the importance of several of the matters

9 Under section 57 of the LGA, a local authority has the power to appoint directors to a CCO. Under section 45 of the Legislation Act 2019, this power to appoint includes the power to remove, suspend and reinstate a director.

10 This states that the principal objective of a CCO is, amongst other matters, to achieve the commercial and non-commercial objectives of its shareholders set out in the statement of intent.

that may be addressed in this way, there could be a place for the parties to agree, between themselves, whether certain aspects should be enforceable or not. This would provide increased certainty for parties, and remove potential for disputes to arise. It should also be made clear that service level agreements can be enforced (to avoid any doubt about this).

182. There is a lack of any clear dispute resolution process in the Bill, as the development of those provisions is left entirely to the relationship agreement process. If relationship agreements are not made enforceable (in part, or whole) then greater emphasis on the partnership between WSEs and councils and dispute resolution may be needed to ensure effective implementation.

183. In addition, it is not clear whether a service level agreement referred to in section 467 is the same thing as a contract under the current section 119 of the WSEA (contracts relating to the provision of water services), or whether they can be different. This requires clarification.

More Detailed Recommendations

Proposed Section	Recommendation	Reason
Section 13, WSEA	Amend functions to fully reflect partnership, by requiring that WSEs involve territorial authority owners in decision-making.	Effective partnership.
Section 14, WSEA	Amend operating principles to expand "open and transparent" requirement to all decision-making.	Effective partnership.
461	Make it clear that there must be engagement with councils (territorial authorities) and mana whenua.	To reflect the functions of the WSE in new section 13.
462	Incorporate feedback loop in principles, so that open / transparent decision-making is achieved.	Effectiveness of engagement.
New provision	Consider introducing new principles for engagement with mana whenua and local government to reflect s13 "partnering" function.	Effectiveness of engagement.
New provision	Amend s70 to allow the RRG to direct the board appointment committee to remove board members where there is just cause; and add breach of the WSE's duty under section 140 to give effect to the statement of strategic and performance expectations to the definition of "just cause" for removal of a director under section 70(4).	Increase accountability of WSE to territorial authority owners.
468	Include specific reference to cooperation over IC charges information and processes as mandatory subject matter of a relationship agreement.	There will need to be a high degree of cooperation and information sharing between the WSEs and councils in relation to IC charges.
468	Clarify relationship of service level agreements with contracts under section 119 of the WSEA.	Clarity.
469	Provide for relationship agreements, or parts of them, to be enforceable. Alternatively, add provisions to strengthen the partnership between councils and WSEs, and make it clear that service level agreements are enforceable.	Strengthen the relationship between WSEs and Councils.

Clause 76 of Schedule 1	Add provision for DIA / the NTU to clearly identify when contact by them is being relied on under this clause as engagement under the Act, and for what purpose.	Clarity.

Topic 11: Transition / Allocation Schedule and Asset Transfer

Summary of Key Points

- Asset transfer provisions require reconsideration, particularly in relation to process and dispute mechanisms
- Clarification needed in relation to the linkage between clauses 42, 43 and 44 of Schedule 1
- Bill should include a dispute mechanism for the payment of water services infrastructure debt (clause 54 of Schedule 1)
- There should be a requirement for the establishment CE to give reasons for not accepting LGO comments on an allocation schedule
- Comments from an LGO should be received before the Minister exercises the power to amend the allocation schedule
- Before any transfer powers are exercised, there should be a clear statement in the Bill about the functions and powers that will remain with councils.

Discussion

Consultation and approval of allocation schedule (proposed clauses 39 and 40 of Schedule 1 of the WSEA)

184. The Bill requires consultation with each local government organisation on the draft allocation schedule and provides opportunities to make written comments. After comments are provided, the establishment CE is obliged by proposed clause 39(d) to inform councils in writing of the reasons for any "amendments made" to the draft.

185. This requirement, if not amended to respond to comments provided by councils, will only capture additions to the draft allocation schedule. The reason this is an issue is that requests by councils to add to allocation schedule may be important, and there is no specific requirement on the establishment CE to address those as part of the consultation process. We recommend proposed clause 39(d) be amended to provide for this.

186. Proposed clause 40 of the Bill provides the Minister with the power to approve the allocation schedule, and power to make "any amendments the Minister considers appropriate". This is an unconstrained power that should be, at the least, linked to a requirement to consider the written comments provided by a council, the response from the establishment CE, and a requirement to provide reasons for any changes to the allocation schedule.

187. We note that proposed clause 40 does not provide a timeframe within which the Minister must approve the allocation schedule (although implicitly the Minister will need to approve the schedule before the establishment date). To ensure that there is certainty about the content of the final allocation schedule, a timeframe should be included, for example "as soon as practicable after receiving the draft allocation schedule, but no later than [20 working days] after it is received".

Transfer and vesting of assets in WSE, and payment of debt (proposed clauses 42, 43 and 44, and clause 54 of Schedule 1)

188. Proposed clauses 42 and 43 of Schedule 1 of the WSEA provide for the vesting in the new WSEs or subsidiaries of assets, liabilities, and other matters relating to water services. This vesting is to occur by Order in Council (**OiC**) on the recommendation of the Minister (under clause 42) or directly under statute, except to the extent that an OiC provides otherwise (clause 43).

189. There does not appear to be any reason why assets, etc should vest in a subsidiary under proposed clause 42. We note that clause 43 does not provide for the vesting in any entity other than the WSEs. We recommend that reference to 'subsidiary' in clause 42 be removed. This issue is discussed further below.

190. There appears to be overlap between proposed clauses 42 and 43 which should be reconsidered. For example, while clause 42 relies on an OiC for the vesting, a number of the assets, liabilities and other matters that can vest overlap with what is captured by clause 43. There is no clarity around when, or why, the OiC option should be used (on the Minister's recommendation), and no provision that provides any accountability around when that power is used.

191. There is a disconnect between the Minister's role under proposed clause 42 and the Minister's functions as set out in clause 7 of Schedule 1 of the WSEA. The Minister is described as having an "oversight" role during the establishment of the WSEs. The provisions in the Bill however provide an unfettered ability to decide or amend the allocation schedule, which extends beyond oversight and into a substantive decision-making role.

192. This extension of Ministerial powers is a concern, as it is not linked to any of the existing principles that govern the preparation of the allocation schedules. For example, proposed clause 42 should be guided by principles relating to the allocation schedule process, including those included in Schedule 1 of the WSEA (see, for example, clause 6). As drafted, there is no link between the substantive powers and those principles, which creates a risk of unfettered decision-making with no dispute resolution process, which is a real issue for mixed assets and property that has a primary purpose or use that is not the delivery of water services (and which should not transfer). The Minister and the establishment CE should be focused on identifying and transferring only those assets that are "wholly" for the provision of three waters services, with no ability to trump any disputes by transferring mixed assets by OiC, which would leave no ability for disputes.

193. Another 'overlap' issue is that proposed clause 42(1)(d) does not specify that the assets, liabilities etc must relate wholly or partly to the provision of water services. This appears to allow an OiC to transfer assets etc that do not relate to water services. This provision should be amended to provide only for the transfer of items if they relate "wholly" to the provision of water services, which is what the policy intent of the reforms is understood to be.

194. We note that proposed clause 43(1)(f) does not provide for the transfer of any statutory approvals or consents that have been applied for before, but not granted or issued by the establishment date. This is a live issue in relation to any RMA application that will be relied on by the WSEs from 1 July 2024. Given the policy intent of Schedule 1, any approvals or consents should also transfer from local government organisations to the WSEs.

Disputes

195. Proposed clause 43(2)(b)(iii) does not apply to any charges or debts payable to or by a council, or local government organisation, in respect of the provision of water services before the establishment date. We consider that unpaid charges payable **to** an LGO at the establishment date should be treated as part of the assets, liabilities, or debt, transferred to the WSE under clause 43(1)(e) of Schedule 1. From 1 July 2024, the WSE is the only entity with a legitimate interest in unpaid debts, and on this basis, the words "to or" in clause 43(2)(b)(iii) should be deleted.

196. We agree that the parties should have access to a dispute resolution process to determine ownership of contentious assets and liabilities, but there appears to be a process gap. Proposed clause 44 only allows for disputes in relation to clause 43, with no ability to raise a dispute in relation to a clause 42 matter. This should be rectified, as there may be good reason to dispute a transfer recommendation made by the Minister.

197. If a dispute is raised under clause 44, there is no provision that excludes any disputed assets, etc from vesting. The Bill should be amended to ensure that any disputed assets do not vest or transfer until such time as any disputes are resolved. In addition, there needs to be a mechanism for amending the allocation

schedule if a dispute is upheld, which removes or amends the disputed item from the allocation schedule before the vesting is then confirmed.

198. The dispute resolution process in clause 44 provides for the referral of any dispute to arbitration. There is no clear ability to attend mediation as an intermediate step. Arbitration can be a costly and time-consuming process, which could extend beyond 1 July 2024. If that occurs, and the asset has already vested as required by clause 43, then the WSEs will be responsible for that asset while the dispute is resolved. This creates some uncertainty, as local government organisations may intend on including that disputed asset in its long-term planning, and other decision-making.

199. As a result, the dispute process in the Bill warrants reconsideration, to ensure that it captures these scenarios.

Debt transfer

200. In terms of water services infrastructure debt, we note that there is no dispute resolution provision associated with proposed clause 54 of the Bill.

201. Clause 54 requires that a WSE must pay an amount (to be determined by the chief executive of the department) equivalent to the total debt owned by a territorial authority. What this clause does not anticipate is that there could be disputes in relation to what equates to this "total debt". As a result, a dispute process such as that provided for in clause 44 should also apply to any dispute over the amount to be paid under clause 54.

More Detailed Recommendations

Clause	Recommendation	Reason
39(d)	Amend the clause to also require that the establishment CE give reasons responding to comments on a draft allocation schedule from an LGO.	Clarity and reduce legal risk.
40	Amend so that the Minister is to be provided with the information exchanged as part of clause 39, and to require the Minister to provide reasons for any changes to the allocation schedule. Prescribe a timeframe for approval of a schedule by the Minister.	Clarity and reduce legal risk.
42	Delete all references to subsidiary.	Not appropriate to vest assets in a subsidiary of a WSE.
42(1)(d)	Add wording to the end of this clause such as: "and relate wholly to [OR are for the primary purpose of] the provision of water services by the local government organisation".	Clarity.
43(1)(f)	Amend the clause to also ensure it covers resource consents and other approvals that are "applied for by" an LGO.	Clarity.
43(2)(b)(iii)	To delete the wording shown: "any charges or debts payable ~~to or~~ by a local government organisation in respect of the provision of water services before the establishment date".	
42, 44	Extend the dispute resolution process provided for in this clause to cover disputes arising under clause 42.	Efficient process.

45(2)(a)	Clause 45(2)(a) incorrectly refers to clause 42 rather than clause 43.	Correction.
54, 44	Amend clause 54 to provide that the territorial authority is required to determine the amount to be paid and / or provide a dispute resolution process (as in clause 44) if there is disagreement over the amount to be paid.	Efficient process.

Topic 12: Amendment to Clause 27 of Part 6 of Schedule 1AA of the Local Government Act 2002 (in force under section 2(g) of the Water Services Entities Act 2022))

Summary of Key Points

- Clause 27 of Schedule 1AA to the LGA provides that any long-term planning (which includes amendments to a long-term plan (**LTP**)) during the establishment period[11] must exclude content related to three waters matters (i.e., delivery of services, asset management, funding arrangements, etc)
- Clause 27 does not recognise that councils retain water services functions through the establishment period, and may need to amend their LTPs relating to water services for valid reasons
- The capture of LTP amendments requires councils to make assumptions about what assets may transfer ahead of the allocation schedule being confirmed, and creates undue complexity for the preparation of financial information supporting any LTP amendment
- **Recommendation:** amend clause 27 of Part 6 of Schedule 1AA of the Local Government Act 2002 to address the above matters.

Discussion

202. Clause 27 of Schedule 1AA of the LGA02 appears too broad, in capturing amendments to a long-term plan.

203. Councils will be required to provide three water services during the establishment period, while also working with the establishment WSEs about what assets with transfer.

204. While the primary intent of clause 27 appears to concern the preparation of LTPs for the 2024/34 period (with the assumption being that three waters will at that time be a WSE responsibility), some councils may need to amend their 2021/31 LTPs for various reasons during the establishment period.

205. The effect of clause 27 is that any council that wants to amend its current LTP will need to remove three water content from the proposal. This creates a practical issue, particularly for councils that have valid reasons for amending their LTP in relation to water services issues. The practical issue is that an LTP amendment is required to include a revised set of forecast financial statements, which would be a flawed exercise for the financial year without including funding matters related to three waters services and assets. If councils are required to exclude any three waters content from such documents, they will be required to make assumptions about what three waters assets transfer or not, which is speculative at best.

206. We note that clause 30 of Subpart 4 to Schedule 1 of the WSEA provides for Department oversight in any event of proposals to amend an LTP, and so it is not the case that councils will have an unconstrained ability to make amendments to their LTPs.

Future LTPs

207. We also recommend that the Bill make it clear that clause 27 is repealed from the establishment date.

11 15 December 2022 to 1 July 2024 (or earlier).

208. This is necessary to allow councils to include relevant water services functions retained by Councils in future LTPs and LTP amendments. It is also necessary to allow councils to rate for stormwater charges that the WSE may bill for under clause 63, up until 1 July 2027.

More Detailed Recommendations

Clause	Recommendation	Reason
27(2), Schedule 1AA, LGA	Add to the end of clause 27(2): "… unless prior approval is obtained from the Department".	Recognises ongoing responsibility by territorial authorities and reduces legal compliance risk.
New provision	Provision required to repeal clause 27 from the establishment date.	Coherence.

Topic 13: Subsidiaries of a WSE (Schedule 5 of WSEA)

Summary of Key Points

- The lack of direct oversight of subsidiaries by councils or a RRG is concerning
- There are already provisions in the WSEA that allow for joint arrangements between WSEs, if this is one of the underlying policy reasons for allowing subsidiaries (akin to the model of joint CCOs)
- If provision for subsidiaries is to remain, there should be greater oversight / control
- There are incompatibilities between some functions and powers given to subsidiaries that also need to be addressed.

Discussion

209. The Bill provides for WSEs to establish subsidiaries, and the provisions appear to be loosely based on the council-controlled organisation (CCO) provisions of the LGA.

210. It is concerning however that the detailed requirements that apply to the WSE board (in particular its relationship to the RRG) do not cascade down to subsidiaries. This creates the potential for important WSE accountabilities to be circumvented, through the use of subsidiaries. In addition, it may be possible for subsidiaries to operate for a profit, which conflicts with the original policy proposals sitting behind these reforms.

Are subsidiaries needed?

211. We query the need for subsidiaries. The explanatory note to the Bill (and background documentation) does not clearly state the rationale for introducing subsidiaries.

212. Although the ability to establish subsidiaries may allow for existing water services CCOs to be replicated under the WSE model with less disruption, it may also give rise to a corporate model that is at odds with the accountability of a WSE to an RRG.

213. Sections 119 and 120 of the WSEA provide for the WSEs to enter into contractual relationships for delivery of services, including joint arrangements. To the extent that subsidiaries are provided for in the Bill to facilitate co-operative undertakings between one or more WSEs, the Act already makes adequate provision for joint arrangements between WSEs.

Greater control and oversight required if subsidiaries remain

214. If the inclusion of subsidiaries is to remain in the Bill there needs to improved accountability to, and involvement by, councils and the RRG, and the wider community. If not adequately controlled, the introduction of this subsidiary model could see significant impacts on more financially vulnerable communities and households (by virtue of their being profit generating).

215. The Bill ought to be amended to ensure that any proposal to establish a subsidiary (whether by the WSE, or a subsidiary establishing another subsidiary) should involve a comprehensive process requiring engagement that provides transparency around the establishment of that structure. An alternative option would be to provide that the establishment of subsidiaries is treated as a major transaction under section 169 of the WSEA, requiring a special resolution of the RRG.

216. In addition, the process to establish a subsidiary should take into account the rationale for and purpose of the subsidiary (and risks), as well as measures to ensure accountability to or control by the WSE. The Bill contemplates that a subsidiary may be formed by more than one WSE and that it can undertake borrowing or manage financial risks that involve a risk of loss, for which the WSE may guarantee, indemnify, or grant security (proposed clause 10 of Schedule 2).

217. While the shareholders of a subsidiary issue statements of expectation, and direct other matters relating to the subsidiary, the shareholders can be other investors separate from the WSE. Such investors may have different expectations about the performance of the subsidiary. Although the constitution of the subsidiary must not be inconsistent with the WSE constitution, this may not provide a sufficient safeguard where other investors have a shareholding.

Incompatibility with functions

218. Although a subsidiary may only carry out functions that are "incidental and related to, or consequential on" the WSE's functions (proposed clause 2(b) of Schedule 5 of the WSEA), there are provisions in the Bill that appear to be inconsistent with such an 'incidental' function (including the transfer of assets to a subsidiary in clause 42, addressed above under Topic 12). The Bill should clearly delimit the activities which may (or may not) be carried out by a WSE through a subsidiary.

219. While Council agrees that significant water infrastructure (as defined) should not be able to transfer to a subsidiary (see clause 11, which amends section 118 of the WSEA), the power in clause 42 for assets to be transferred / vested to a subsidiary through the allocation schedule process and an OiC has the potential to give a subsidiary greater control than would appear appropriate in light of clause 2(b) of Schedule 5.

220. As set out above, we recommend that the reference to subsidiary in clause 42 be deleted, so that assets can only transfer to the WSE in the first instance. Any subsequent transfer should properly engage the accountability provisions in the WSEA applying to the WSE Board / RRG.

221. We also recommend amending clause 9 of Schedule 5 to make it clear which 'activities' from sections 118 and 119 are relevant. It appears the activities in section 118 ae those set out in section 118(2), but section 119 does not refer to activities at all. Section 119 concerns contracts for the operation of all or part of a water service and sets out matters for which the WSE remains responsible.

Recommendations

Clause / Section	Recommendation	Reason
New	Reconsider the rationale for subsidiaries, and whether they are needed at all. If they are to remain, include a new clause to provide that any proposal to establish a subsidiary (whether by the WSE, or a subsidiary establishing another subsidiary) requires an engagement process similar to the establishment of a council CCO.	Ensure councils / the RRG have the same level of control over subsidiaries as it does over the WSE, and they are established using a clear and transparent process.
Amend section 169 WSEA	Alternatively, amend section 169 so the establishment of subsidiaries is treated as a major transaction.	Subsidiaries are established using a clear and transparent process.
New	Add a provision stating which activities may (or may not) be carried out by a subsidiary on behalf of the WSE.	To ensure that subsidiary functions are "incidental

		and related to, or consequential on" the WSE's functions.
Clause 9 of Schedule 5 of the Bill	Amend to state the 'activities' from sections 118 and 119 that apply, rather than just refer to these sections.	Clarify.

Topic 14: Powers to Carry Out Works on Māori Land

(Part 6, sections 200, 207 - 209,224, 239 and 240)

Note that the submission points of TCC and Te Rangapū Mana Whenua o Tauranga Moana for this topic differ. Both sets of submission points on this topic are included, separately, for consideration.

TCC Submission Points

Summary of Key Points

- The Māori land provisions are complex and an introductory section to Part 6 could assist in clarifying the relationship of the provisions relating to Māori land to the other provisions in Part 6·
- Multiple Māori landowners should be given the same opportunity to impose reasonable conditions on a WSE carrying works on their land that the Bill gives owners of general land (assuming that power to impose conditions is retained)
- The requirement for the WSE to obtain landowner consent under section 209 – as opposed to merely giving notice – before undertaking s200(1)(b) or (c) activities such as removing vegetation or blockages, or maintaining or renewing infrastructure, would be extremely burdensome for the WSE
- It is appropriate that a WSE must appeal to the Māori Land Court (rather than the District Court) where landowners of certain Māori land do not consent; however, the Māori Land Court should be the final decision-maker, with no further right of appeal
- It should be made clear in section 229 that the Māori Land Court deals with disputes on all Māori land.

Discussion

222. The relationship between the provisions in sections 207 and 209 and the other provisions in Part 6 (particularly sections 200 – 203) is not entirely clear. The Bill would benefit from an introductory section which provides an outline of Part 6 (such as is found in section 131 of the WSEA, and in a number of Parts of the Local Government Act 2002 (LGA02)).

223. There does not appear to be a clear rationale why 'general' Māori landowners have the ability to impose reasonable conditions in relation to obstructions and maintenance works under section 200(3); but owners of Māori land with more than 10 owners do not have a similar power to impose reasonable conditions. While it may not be easy for multiple landowners to agree on reasonable conditions, they should be given the opportunity to do so.

224. Whilst we have submitted that the reasonable conditions power be removed altogether (with section 200 refocused to align with the current powers in section 181 and Schedule 12 of the LGA02), if the reasonable conditions power remains for all landowners, then we recommend that section 200(3) also apply to Māori land with more than 10 owners, but with a timeframe in which they must provide the conditions (and the works can continue if there are no conditions imposed).

225. As submitted, we have recommended that: "the subpart 5 appeal rights from the District Court or Māori land Court (proposed sections 227, 228 and 230) are too extensive. The matters being referred to those Courts, either be application or appeal, are essentially factual in nature, involving an assessment of the necessity of the works in that location, the impact on the landowner and the reasonableness of conditions. This is suitable subject matter for the District Court or Māori Land Court, as the case may be, and the Bill should provide that the decision of those courts is final. At present, under Schedule 12 of the

LGA, the District Court's decision is final." There is no need to involve the Māori Appellate Court (s230); the decision of the Māori Land Court should be final.

226. If the WSE powers remain the same as proposed in the Bill, TCC would recommend an amendment to section 229, for the 'general' category of Māori land covered by section 200, to give the same powers as the District Court in proposed section 203 to the Māori Land Court. This would mean that where a Māori landowner does not grant consent within 15 working days, or they grant consent with conditions the WSE considers are unreasonable, the WSE would apply to the Māori Land Court instead of the District Court.

227. Further clarifications for definitions are required. 'Marae' is defined very broadly, however 'urupā' is not defined.

Te Rangapū Mana Whenua o Tauranga Moana Submission Points

Works on Māori Land

228. Subpart 1 of new Part 6 sets out a water service entity's power to carry out work in relation to water services infrastructure on or under land and includes specific requirements for carrying out work on or under limited categories of Māori land.[12]

229. Notice is required in all instances, although the need to seek landowner consent to undertake works is not a blanket requirement. This is a concern to Te Rangapū. In respect of these specific issues, we offer comments, and propose amendments, below.

1. Notice is required in all instances, although the need to seek landowner consent to undertake works is not a blanket requirement. This is a concern to Te Rangapū. In respect of these specific issues, we offer comments, and propose amendments, below.

230. As an overarching comment in respect of all sections relating to water service entity works on Māori land, we consider that the approach of clause 298 of the Natural and Built Environment Bill (**NBE Bill**) is required. That clause, which concerns designations, confirms that:

1. the functions, duties, and powers conferred in respect of designations must be exercised in a manner that recognises that 'protected Māori land' (as defined in the NBE Bill) is a taonga tuku iho for the owners of the land and the hapū associated with the land;

2. a person exercising a power or performing a function or duty under the subpart must consider the rights and interests of owners of protected Māori land to retain, control, utilise, and occupy the land for the benefit of present and future generations of owners, their whānau, and their hapū.

231. **Relief sought**: We request that the same approach is taken to works on Māori land by water service entities, through a new section 206A that adopts the same language in respect of Māori land under the 2022 Entities Act.

New Section 207 (Māori Reservation Land or Land on which Marae or Urupā Located)

232. Proposed section 207 applies to any work to be carried out by a water services entity. The entity may enter the land and carry out work only if:

- consent is obtained from the owners; and
- 15 working days' notice of any intention to enter the land and carry out work is given to an occupier of the land.

233. **Relief sought:** We request retention of this clause, subject to an amendment to proposed section 207(2)(b) confirming that notice must be given to the owner as well an occupier of the land. This amendment is necessary because there may be no permanent occupiers of the land, but the owners nonetheless have an interest in knowing when works are to be completed.

[12] WSL Bill clause 22.

New Sections 208, 209 and 210 (Māori Land with more than 10 Owners)

234. Proposed section 208 outlines the consent and notice requirements applying to the following water service entity activities on Māori land:

- The construction or placing of water services infrastructure on or under land or under a building on land, where proposed on Māori land with more than 10 owners
- Removing any obstruction or blockage, or clearing any flora that constitutes a risk to, water services infrastructure on or under land or under a building on land and operating, inspecting, maintaining, altering, renewing, or replacing any water services infrastructure on or under land or under a building on land (referred to in this submission as **Maintenance Activities**), where proposed on Māori land with more than 10 owners and the whenua is Māori reservation land or land on which marae or urupā are located.

235. The water services entity may enter the land and carry out the work only if:

1. it has been granted consent of the owners;[13] and
2. 30 working days' notice of any intention to enter the land and carry out work is given by:
   - serving the trustees of the principal marae of the hapū associated with the land; or
   - publishing a notice via the Māori Land Court; or
   - serving a notice on the Registrar of the Māori Land Court.

236. Proposed section 209 applies to a water services entity undertaking Maintenance Activities on multiply owned Māori land where the whenua is not Māori reservation land or land on which marae or urupā are located. The notice requirements associated with proposed section 209 are the same as section 208 above. However, there is no requirement to obtain consent from the Māori landowner.

237. Proposed section 210 applies if a water services entity wishes to carry out work on land that is in a reserve vested in a PSGE under a Treaty settlement Act and managed by a local authority. Notice in writing must be given to the PSGE and the local authority at least 15 working days before work begins. Again, there is no requirement to obtain consent from the Māori landowner.

238. **Relief sought:** Te Rangapū has the following issues with proposed sections 208 – 210:

1. In relation to works carried out under sections 208 and 209:
   (a) Notice must be given to landowners.
   (b) Indeed, landowner notification should be substituted for "serving the trustees of the principal marae of the hapū associated with the land". This is not an effective option to ensure that persons who have a relationship with that whenua are given notice of works:
      - It is unclear from the WSL Bill or its supporting material how the relevant water services entity will determine who the relevant hapū is or which is their principal marae. Determining who the relevant hapū group for land is can be difficult for some entities and, where the wrong group is contacted, the notification requirement becomes wholly ineffective.
      - Even where the relevant hapū group is known, in the case of section 209 where there is no proposed requirement to obtain landowner consent, allowing a water services entity to satisfy its notification requirements by notifying that the trustees of the relevant hapū group places the burden of actually notifying the Māori landowners on that group. That is unacceptable.

[13] Where there are more than 10 owners, consent is determined in accordance with the rules under Parts 9 and 10 of Te Ture Whenua Māori Act 1993, which provide how land owners may collectively make decisions.

(c) To ensure that landowners of multiply-owned Māori land do not bear the burden of having to communicate that works are proposed to other persons with an interest in the whenua, the notification requirement should be amended as follows:

(i) given written notice of its intention to enter the land and carry out work to the owners of the land; and

(ii) published a notice on an Internet site maintained by or behalf of the Maori Land Court or in the Maori Land Court Pānui (or both) relating to its intention to enter the land and carry out the work; or

(iii) served notice on the Registrar of the Maori Land Court in accordance with section 181 of Te Ture Whenua Maori Act 1993 of its intention to enter the land and carry out the work.

2. We do not support the lack of obligation to obtain landowner consent in proposed sections 209 and 210. This seemingly arises because the Maintenance Activities the subject of these sections are considered less likely to adversely affect the whenua concerned, and the whenua to which these sections apply are considered less special. If that is the case, we strongly refute such suggestions:

(a) As identified in Te Ture Whenua Māori Act 1993, and recently acknowledged in the NBA Bill, all Māori land is a taonga tuku iho.

(b) Iwi and hapū are aware of other instances where utility operator or other public entity works properly categorised as construction or placing of infrastructure are characterised as Maintenance Activities so as to avoid additional obligations, such as landowner consent.

3. The reference to "Māori land with more than 10 owners" limits the land to which the relevant landowner consent and notification requirements apply. This is because it:

(a) excludes application of the requirements where Māori land has less than 10 beneficial owners;

(b) makes uncertain whether the provisions apply to multiply-owned Māori land where administration structures, such as a trust or incorporation,[14] are in place. This cannot be right.

4. Finally, we do not support the very limited application of section 210 to land vested in a PSGE under a Treaty settlement Act and managed by an administering body that is a local authority. That suggests that other Treaty settlement lands are not lands for which protection should be afforded as taonga tuku iho.

5. We request that:

(a) section 210 is deleted.

(b) the reference to "Māori land with more than 10 owners" in sections 208 and 209 is amended to "other Māori land", which is defined as:

(i) Māori customary land;

(ii) Māori freehold land;

(iii) land held by or on behalf of an iwi or a hapū if the land was transferred from the Crown, a Crown body, or a local authority.

(iv) land received through Treaty of Waitangi settlement.

(c) Landowner consent is a condition of all proposed water services entity works on Māori land. This should be the default position in any event, given proposed new section 229 allows a water services entity to appeal to the Māori Land Court against a refusal to grant consent.

[14] Proposed s322(7) states that "trustee includes a body corporate constituted under Part 13 of Te Ture Whenua Māori Act 1993", so covers incorporations.

(d) Proposed sections 208(3) and 209(2)(c), which refer to processes specific to "Māori land with more than 10 owners", are qualified as applying where the "other Māori land" is not vested in a trust or incorporation.

Requirements for Easements over Certain Land

239. Proposed section 224 states that if a water services entity needs to create an easement over land that is a Māori reservation or is marae or urupā land, it must follow the Māori Land Court process for creation of easements in Te Ture Whenua Māori Act 1993.

240. We support maintaining the jurisdiction of the Māori Land Court in relation to the creation of easements on Māori land, rather than a bespoke legislative solution subverting existing process.

Appeals to the Māori Land and Māori Appellate Courts

241. Proposed section 229 allows a water services entity to appeal to the Māori Land Court where the Māori landowners refuse to grant access for works. The Māori Land Court has the power to either confirm the decision to refuse access or to set it aside. Proposed section 230 confirms that a decision of the Māori Land Court about access may be appealed to the Māori Appellate Court in the usual way.

242. The process is in contrast with the approach to general land under the WSL Bill, where a water services entity can apply to the District Court for an order authorising it to carry out any work where access is refused to general land.

243. We support proposed section 229. It adopts the starting point that the decision to refuse access sits with the landowners, and not with the Court. The Court may then consider whether that decision was properly made and reasoned, rather than usurp the mana of Māori landowners to decide in the first instance.

244. We consider that the Māori Land Court is best placed to understand the concerns Māori landowners may have about granting access to their whenua, including recognising the impact on Māori land is a taonga tuku iho.

Board may Designate Controlled Drinking Water Catchment Areas

245. Proposed section 231 authorises a water services entity board to designate controlled drinking water catchment areas for which a controlled drinking water catchment management plan may be issued for the purposes of (among other things) managing and controlling a source of a drinking water supply in the area.

246. Under section 231(2), a designation may be made only if:[15]

- the water services entity owns or has long-term control of the land to which the designation relates; or
- the owner of the land to which the designation relates agrees to the designation.

247. **Relief sought:** This is an important qualification that must be retained, to ensure that iwi and hapū puna are not captured where they do not agree.

Topic 15: Te Mana o Te Wai

The introduction of Te Mana o te Wai, putting the well-being and health of our rivers, lakes, aquifers, and estuaries at the centre of how we manage our freshwater, is fundamental to achieving 3 Waters Reform outcomes. These reforms provide the opportunity for an integrated approach to the management of our waters, and TCC alongside Te Rangapū Mana Whenua o Tauranga Moana, support the opportunity to put the health and well-being of water and our community at the centre of how we deliver three waters services now and for future generations.

[15] This is re-enforced by new section 232(3).

Discussion

248. The definition of Te Mana o te Wai in the 2022 Entities Act is unworkable in its current form. Section 6 of the 2022 Entities Act states that Te Mana o Te Wai "applies, for the purposes of this Act, to water (as that term is defined in section 2(1) of the Resource Management Act 1991)." The cross-reference has inadvertently adopted RMA section 2(c) of the definition of water, which "does not include water in any form while in any pipe, tank, or cistern". This is clearly an unintended error as it makes a nonsense of Te Mana o te Wai for the purposes of this Act.

249. Te Rangapū understands that the adoption of the section 2 RMA definition of water was directed toward the matters in section 2(a) and (b), consistent with submissions made, including by iwi and hapū, that the definition of Te Mana o Te Wai be extended to include not only freshwater, but also marine and estuarine waters, lagoons, and puna. This was to recognise the fact that three waters infrastructure is not constrained to freshwater bodies but impacts on our all our waterways and receiving environments.

250. Under section 2(a) and (b) of the RMA water:

(a) means water in all its physical forms whether flowing or not and whether over or under the ground

(b) includes fresh water, coastal water, and geothermal water.

251. **Relief sought:** Amend the section 6 definition of Te Mana o te Wai as follows:

Te Mana 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

(b) applies, for the purposes of this Act, to:

(i) <u>water in all its physical forms whether flowing or not and whether over or under the ground; and</u>

(ii) <u>fresh water, coastal water, and geothermal water.</u>

Application

252. Further, while a range of provisions in the 2022 Entities Act refer to Te Mana o te Wai, including that all persons performing or exercising duties, functions, or powers under the 2022 Entities Act must give effect to Te Mana o te Wai, Te Rangapū considers that the WSL Bill can strengthen the water service entity framework by ensuring that Te Mana o te Wai is appropriately reflected throughout the framework and to provide more clarity on its application and effect:[16]

253. Further, while a range of provisions in the 2022 Entities Act refer to Te Mana o te Wai, including that all persons performing or exercising duties, functions, or powers under the 2022 Entities Act must give effect to Te Mana o te Wai, Te Rangapū considers that the WSL Bill can strengthen the water service entity framework by ensuring that Te Mana o te Wai is appropriately reflected throughout the framework and to provide more clarity on its application and effect:

1. The WSL Bill must include Te Mana o te Wai as an overarching purpose, or foundational and interpretive concept, guiding decision making, planning, governance, accountability, and service delivery.

[16] This was also a specific recommendation of the Governance Working Group on Representation, Governance and Accountability of New Water Services Entities, page 51.

2. Te Mana o te Wai is reflected at all levels of the water service entity framework, including as a core competency of the boards, and embedded throughout all operational documents.

254. **Relief sought:** Reaching this point requires:

1. Overarching objective – An amendment is required consistent with examples in Treaty settlement legislation, including the Waikato River and Waipā River legislation, where Te Mana o te Wai is included as the overarching purpose of the Act alongside the existing purpose clause. Alternatively, Te Mana o te Wai could be elevated to a foundational and interpretive concept.

2. Board competency – An amendment to section 76 of the 2022 Entities Act (regarding the collective duties of a water services entity board relating to Te Tiriti o Waitangi) is required to also include reference to Te Mana o Te Wai (mirroring the dual recognition in section 4).

3. Operational documents – Amendment to all provisions concerning the content of the water services entities' operational documents to ensure appropriate reference to Te Mana o te Wai. While some operational documents already include reference to Te Mana o te Wai, in others the reference is insufficient.[17] For example, section 149(2)(d) of the 2022 Entities Act requires a statement of intent for a water services entity to set out any actions the entity intends to take relating to water services as part of its response to a Te Mana o te Wai statement for water services. It does not require a water services entity to set out any actions the entity intends to take to give effect to Te Mana o te Wai separate to receipt of any Te Mana o te Wai statement. This means that the obligation is only triggered by a Te Mana o te Wai statement. That is not acceptable. Section 149(2)(d) requires amendment as follows: For example, section 149(2)(d) of the 2022 Entities Act requires a statement of intent for a water services entity to set out any actions the entity intends to take relating to water services as part of its response to a Te Mana o te Wai statement for water services. It does not require a water services entity to set out any actions the entity intends to take to give effect to Te Mana o te Wai separate to receipt of any Te Mana o te Wai statement. This means that the obligation is only triggered by a Te Mana o te Wai statement. That is not acceptable. Section 149(2)(d) requires amendment as follows:

   (d) any actions the entity intends to take relating to water services to give effect to Te Mana o te Wai, including (consistent with its plan under section 144(2)) as part of its response to a Te Mana o te Wai statement for water services.

Topic 16: Miscellaneous Amendments

Recommendations

Provision	Recommendation	Reason
Clause 5 / section 6 - definitions	Amended definition of "water services". The new paragraph (c) should replace, rather than supplement, the existing paragraph (c).	Amended definition is to include "water supplied by a water services entity for agricultural or horticultural purposes" – but this seems unnecessary as the existing definition is similarly worded in paragraph (c) and would

[17] For example:
- section 133(2)(d) of the 2022 Entities Act, the Government Policy Statement must include the Government's expectations in relation to Māori interests, partnering with mana whenua, and giving effect to Te Mana o te Wai
- section 139(2)(a)(v) of 2022 Entities Act a statement of strategic and performance expectations for a Water Services Entity must include how the water services entity is expected to give effect to Te Mana o te Wai.
- proposed section 256(1)(f) under the WSL Bill, a stormwater management plan must state how the stormwater management plan is to give effect to Te Mana o te Wai, including any actions the water services entity is to take as part of a response to a Te Mana o te Wai statement under section 144.

		already capture the same situation.
	"Green water services infrastructure??	
Clause 7 / section 13	Paragraphs (d) and (e) should be amended to recognise that in some circumstances WSEs will need to engage with mana whenua and communities outside their service area, i.e.: (d) to partner and engage with mana whenua in, and where appropriate outside, its service area. (e) to engage with consumers and communities in, and where appropriate outside, its service area.	One of the WSE's functions in paragraph (d) is to "partner and engage with mana whenua in its service area". "Service area" is defined in s6 of the WSEA as "the area identified in Schedule 2 as the service area of the entity". In the case of the Northern WSE, its service area does not include the current Waikato region despite critical water services infrastructure for Auckland (e.g., the Mangatangi and Mangatawhiri Dams, Waikato Water Treatment Plant, and Pukekohe Wastewater Treatment Plant) being in the Waikato region and the five "River iwi" including Waikato-Tainui being the relevant manawhenua. It is not sufficient to be engaging with other WSEs where the provision of water services crosses service area boundaries, as per the function in (f), as the engagement needs to be directly between the WSE and affected mana whenua or other part of the community.
Section 35A	This section provides that notice can be given by Medical Officer of Health or Taumata Arowai to a WSE or regional council to carry out an assessment of potential contamination and take reasonable steps to warn users. The word "supply" in section 35A(2) appears to be incorrect. The word "source".	Section 35A(2) refers to a WSE "responsible for the supply", but the section itself relates to warning users of a domestic self-supply. The WSE is not responsible for a domestic self-supply and does not have to include these in the WSE's assessment under section 245.

		WSEs and regional councils are responsible for a “source”.
Section 233 (and offence provisions in subpart 4)	Under this section the chief executive may give a direction to comply with a controlled drinking water catchment management plan. However, there is no offence for failure to comply with a direction by the chief executive.	There should be an offence linked to a direction by the chief executive under section 233, similar to section 412 (a person commits an offence if they fail to comply with a direction issued by a compliance officer under sections 364 or 365(2)(b)).
Section 258	Amend clause 258(1)(b), replacing it with "develop a stormwater management plan that has regard to any comments made by Taumata Arowai on the draft plan relating to the water services entity's obligations under the Water Services Act".	The requirement for entities to "give effect to" Taumata Arowai comments on draft stormwater management plans seems to give Taumata Arowai a broader role than intended. Taumata Arowai will have the expertise to provide comments in relation to, for example, performance standards, but the WSE should not be required to give effect to all comments (e.g., those relating to resource management matters, which are matters for local authorities) relating to the plan. The WSEs will already have the incentive to give effect to comments where it assists the entities to comply with their obligations under the Water Services Act, which is enforced by Taumata Arowai.
Section 420	Consider including a greater number of offences within the definition of “infringement offence”.	The cost of prosecuting for, say, the relatively low-level offence of carrying out work in immediate proximity to the network without notifying WSE (section 407) is likely to be prohibitive. Application of the infringement regime would more effectively deter such conduct.
Clause 129; sections 471 and 472 of the WSEA	WSE should be subject to timing obligations for provision of information to council, especially where that is necessary for council to respond to a particular LIM or PIM request. If necessary, deadline for providing	LGOIMA is amended to provide that a LIM must contain information on private and public stormwater drainage as shown in TA’s and WSE’s records. In order to be

	LIM or PIM should be extended, to cater for this extra step. Bill should also say that responsibility for accuracy and completeness of information sourced from WSE rests with WSE not the council.	able to respond to LIM requests, WSE must provide to TA all information it holds on private and public stormwater and sewerage drains. In order to ensure the information is up to date, this will presumably have to happen in response to each request. Similar requirement in order to respond to PIMs under Building Act. But Bill does not expressly address timing requirements for provision of this information (given that council is under statutory deadlines) or question of responsibility if information originating from WSE is inaccurate or incomplete.
	Add a requirement that the DCE and Taumata Arowai liaise, where both organisations are investigating or taking compliance and enforcement steps in relation to the same matter or property, which appears to be a possibility.	If both organisations are investigating compliance issues at the same time a property owner could end up with multiple visits over the same matter and it would be preferable if this was avoided.
Clauses 130, 131 and 140	These clauses are not required.	Schedules 1 and 2 of LGOIMA are already amended by sections 225 and 226 WSEA. Schedule 1 of the Ombudsman Act is already amended by section 228 of the WSEA.
Clause 52 of Schedule 1 to the WSEA	Clause 52 could be amended to allow for a Council CCO to be treated as a 'third party' in this clause (even though they are treated as a 'local government organisation' in the rest of the transfer related provisions).	Under the WSEA, contracts held by a Council CCO that relate to the provision of water services are included within the definition of 'assets, liabilities and other matters'. The Minister can give directions under clause 52 about how a CCO contract should be dealt with. The Bill does not clearly address the situation where the contract is between two 'local government organisations', (e.g., the council and a CCO), and how

		the Minister can give directions regarding these.

Section 3

Further Submission Points of Te Rangapū Mana Whenua o Tauranga Moana

Key Concerns

Undermining of Iwi and Hapū Rights and Interests in Water

255. The Government has failed to deal with the issue of iwi and hapū rights and interests in water in developing successive Bills to reform delivery of water services in Aotearoa. While section 10 of the 2022 Entities Act ostensibly preserves right and interests in water, the proposals in this Bill prejudices those rights and interests in so far as they manifest in the ownership of water assets, liabilities, and other matters.

256. In particular, new Part 2 of Schedule 1 of the WSL Bill provides for the transfer of local government organisation assets, liabilities and other matters to water services entities, voiding application of provisions of the Public Works Act 1981 that relate to disposal to former owners of land (including Māori land) not required for a public work.

257. Further, there is no role for iwi and hapū in respect of preparation of the allocation schedules for each water service entities, the primary mechanism used to transfer assets from local authorities to water service entities. The proposed WSL Bill amendments applying to the allocation schedules include new consultation requirements (though with local government organisations only, not iwi and hapū), and the requirement for Ministerial approval.

258. Land that is surplus to requirements must be properly available for transfer to iwi and hapū.

259. **Relief sought:** New provisions are required in the WSL Bill that provide for iwi and hapū to be involved at the earliest stage in the assessment of which assets, including land, may or may not be considered a water infrastructure asset and whether they should be transferred to a water services entity. The provisions need to apply to ongoing water entity decisions in respect the retention or disposal of assets.

260. In similar vein, local government-owned mixed-use rural water supplies that provide drinking water in addition to water for farming-related purposes will transfer to water services entities. The Bill also contains provisions (proposed sections 234 – 244) that enable those supplies to be subsequently transferred to an alternative operator (for example, the farming or community served by the supply). The alternative operator must prepare a business plan for the proposal that is independently assessed for its viability. Transfer may occur if supported by a referendum. The transfer of the service cannot occur if it breaches any Treaty settlement obligation.

261. Te Rangapū is not opposed to water supplies being managed locally, including potentially by mana whenua. However, a similar process needs to be built in, involving iwi and hapū at the earliest stage, where the assets to be transferred are first assessed for continued need and opportunities for transfer of surplus assets are identified. As above, the provisions need to apply to ongoing water entity decisions in respect the retention or disposal of assets. Further, a clause such as that proposed in respect of water service entity subsidiaries is required, where alternative operators must give effect to Treaty settlement obligations.

262. Practically, we also note that there appears to be no clarity about what happens if the alternative operator no longer wishes to supply water services. The most relevant provision appears to be proposed section 250, but that provision is drafted with problems with drinking water supply in mind rather than a decision to discontinue a well-functioning supply system. We would assume that responsibility for supply including any assets reverts back to the relevant water services entity, but we suggest that is clarified in the WSL Bill provisions, and where that transfer occurs iwi and hapū participation is similarly engaged.

Upholding Tiriti o Waitangi Settlements

263. Te Rangapū supports the transitional provisions in the WSL Bill affirming that, during the establishment period for water services entities, all persons exercising duties, functions, or powers must uphold the integrity, intent and effect of Tiriti settlements.[18] We also support that direction that subsidiaries of water services entities must give effect to relevant Treaty settlement obligations that apply to its parent entity.[19] These proposals reinforce the general proposition in section 9 of the 2022 Entities Act that Tiriti settlement obligations prevail.

264. Proposed section 225 also states that whenever a water services entity is looking to purchase land for water services infrastructure, it must consult the Minister for Treaty of Waitangi Negotiations for the purpose of considering the Crown's obligation to provide redress for future Treaty of Waitangi claims. We support the intent of this provision to ensure that the pool of land available for Treaty Settlements is not reduced by the operation of this legislation.

265. The Explanatory Note to the WSL Bill explains that engagement is underway with iwi who have Tiriti water service-related settlement arrangements. It contemplates changes to Tiriti settlement legislation to ensure that settlement obligations are carried forward from territorial authorities to the new water services entities. However, the Bill does not address the potential need to modify Water Services legislation to accommodate settlement arrangements.

266. **Relief sought:** We request that the WSL Bill set out a process, as with the Natural and Built Environment Bill, for such modification to occur.

Upholding Other Arrangements

267. It is equally critical that negotiated arrangements such as JMAs entered into under the RMA that do not arise from Treaty settlements[20], Mana Whakahono ā Rohe,[21] section 33 RMA transfers[22] and other non-RMA arrangements relating to water services delivery or infrastructure are upheld.

268. **Relief sought:** We support retention of clause 78 of Schedule 1 and proposed section 474(1)(c) establishing that contracts, arrangements, or understandings that local authorities have entered with mana whenua relating to water services transfer to water services entities.

Partnering and Engaging with Mana Whenua

269. Section 5 of the 2022 Entities Act refers to a list of provisions in that Act that are intended to recognise and respect the Crown's responsibility to give effect to the principles of te Tiriti o Waitangi,[23] and the WSL Bill proposes a range of additions to the list.

270. Proposed section 5(ba) introduces a new function of a water services entity is to "partner and engage" with mana whenua in its service area.[24] This is a general function, with not specific examples given. We consider this new section appropriate, as it mirrors section 14(g) of the 2022 Entities Act stating that an operating principle of a water services entity is "partnering and engaging early and meaningfully with Māori".

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18 The section currently exists in Schedule 1, clause 37 of the 2022 Entities Act.

19 Amendment to 2022 Entities Act, Schedule 5 clause 8 of the WSL Bill.

20 There are currently JMAs under the RMA between Ngāti Tūwharetoa and Taupō District Council (2009) regarding consenting on Māori land and between Ngāti Porou and Gisborne District Council (2015) regarding decision-making in the Waiapu catchment. Māngai Māori arrangements on critical decision-making committees between Waikato-Tainui and both Hamilton City Council and Waikato District Council.

21 Being an iwi participation arrangement entered into under Part 5 Subpart 2 of the RMA (noting the recent mana whakahono ā rohe signing between Ngāti Tūrangitukua and Taupō District Council).

22 There is currently one transfer that has been made under section 33 of the RMA (being between Ngāti Tūwharetoa and Waikato Regional Council).

23 Critically, this list does not limit 2022 Entities Act section 4(1)(a) (all persons performing or exercising duties, functions, or powers under this Act must give effect to the principles of te Tiriti o Waitangi / the Treaty of Waitangi), as per 2022 Entities section 4(2); and Treaty settlement obligations prevail, as per 2022 Entities Act section 4(3).

24 WSL Bill clause 4(1) (inserting 2022 Entities Act, section 5(ba)).

271. Proposed section 5(h) then cross-references a range of provisions that relate to duties, functions or powers of water service entities and the Minister, for which "there must be engagement with mana whenua". No reference to partnership is made. Those provisions concern:

The board of a water services entity must engage with mana whenua when:

1. developing a controlled drinking water catchment plan;[25]
2. assessing access to drinking water supply and other water services;[26]
3. developing a stormwater management plan or stormwater network rules;[27]
4. developing or amending its trade waste plan;[28]
5. making rules that would limit certain work being undertaken near a water supply system or other water network;[29]
6. adopting a policy for charging for contributions to water infrastructure;[30]
7. developing or amending its compliance and enforcement plan;[31]
8. developing or amending rules for reporting and record keeping to assist with monitoring compliance;[32]
9. the Minister must engage with mana whenua:
    - about the making of a model constitution for water services entities before making it;[33]
    - about the transfer of any agreements, contracts, or understandings they may have with local authorities to the water services entity.[34]

272. Nowhere else in the 2022 Entities Act are matters on which the water services entities must partner with mana whenua listed. This makes existing section 14 (regarding operating principles) and proposed section 5(b)(a) both misleading and an empty promise.

273. Engagement is defined under the WSL Bill.[35] A water services entity or the Minister must, before deciding on a matter, consult on a proposal and / or seek input, on an iterative basis, during the formulation of a proposal, or feedback on a proposal.[36] To "partner and engage" clearly requires a higher standard.

274. **Relief sought:**

1. Proposed section 5(h) requires amendment to provide that there must be "partnership and engagement with mana whenua", to ensure consistency with proposed section 5(ba).
2. Consequential amendments will be necessary to the individual provisions to which proposed section 5(h) relates, to confirm the partnership relationship.
3. Finally, reference to two further provisions should be added to proposed section 5(h), to ensure a role for mana whenua is accommodated in respect of those matters:
    - Proposed section 277 (Engagement requirements for water usage restrictions and consumer behaviour rules)

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25 WSE Act, section 232(5); inserted by WSL Bill.
26 WSE Act, section 247(1)(a); inserted by WSL Bill.
27 WSE Act, section 257(1)(b) and 262 (1)(d); inserted by WSL Bill.
28 WSE Act, section 271(1)(c); inserted by WSL Bill.
29 WSE Act, section 286(1)(b); inserted by WSL Bill.
30 WSE Act, section 347(1)(a); inserted by WSL Bill.
31 WSE Act, section 355(b); inserted by WSL Bill.
32 WSE Act, section 473(3); inserted by WSL Bill.
33 WSE Act, section 474(2); inserted by WSL Bill.
34 WSE Act, section 474(6); inserted by WSL Bill.
35 At proposed section 461 of the WSL Bill, which is substantially the same as the engagement provision (section 206) in the 2022 Entities Act.
36 WSL Bill clause 22 (inserting 2022 Entities Act, section 461(2)).

- Proposed section 295 (Engagement for water services infrastructure connection requirements).

Purpose and Content of Government Policy Statement

275. Under the 2022 Entities Act the Minister may issue a Government policy statement on water services. Section 133 of the 2022 Entities Act sets out the purpose of Government policy statements and lists matters that must be included when one is created, as well as matters that are optional to include.

276. Clause 13 of the WSL Bill adds redressing historic unfairness in accessing water services as an optional matter that the Government can set expectations for water services entities on in a policy statement.

277. **Relief sought:** We support the retention of this new provision. Addressing historic unfairness in accessing water services will benefit rural Māori communities.

Duty to Ensure Communities have Access to Drinking Water if Existing Supplier Faces Significant Problems

278. Proposed section 250 states that, if a supplier (not being the water services entity) is facing a significant problem or potential problem with its drinking water supply, and a water services entity takes over the management and operations of a drinking water supplier on a permanent basis, the water services entity, Taumata Arowai, the former supplier, and (if relevant) the affected consumers must work together to determine how to deal with, among other things, any assets and liabilities of the former supplier.[37]

279. This proposed section makes no reference to mana whenua, and yet it is a prime opportunity to demonstrate the partnership commitment to mana whenua in proposed section 5.

280. **Relief sought:** Amend sections 250(2)(a) and (6) as follows:

(a) work collaboratively with the supplier, the consumers of the supply, mana whenua and Taumata Arowai to identify, as the circumstances allow and within a time frame determined by Taumata Arowai, 1 or more of the following:

(6) If a water services entity takes over the management and operations of a drinking water supplier on a permanent basis, the water services entity, Taumata Arowai, the former supplier, mana whenua and (if relevant) the affected consumers must work together to determine how to deal with

Vesting Water Services Infrastructure in Water Services Entity

281. Proposed section 317 provides for to a person (the owner of water services infrastructure) to apply to a water services entity to vest water services infrastructure in the entity.

282. We take this provision to be directed toward the vesting of private owner infrastructure in the water services entity, and request that this is made clear in the section to ensure that this provision does not contravene iwi and hapū rights and interests (i.e., by being an alternative pathway for local government asset transfers).

283. **Relief sought:** Amend section 317(4) as follows:

(4) In this section, person means the private owner of water services infrastructure.

Charging Principles

284. Proposed section 331 of the 220 Entities Act sets out the principles that must be considered by a water services entity board when setting charges.

285. We specifically support the following principles:

[37] WSL Bill clause 22, new WSE Act section 250(6).

1. charging different groups of consumers differently (only) if those groups receive different levels or types of services; and

2. the board may set lower charges (including no charges) for particular consumers to remedy inequities in the provision of services.

286. **Relief sought:** We support the retention of this provision. Many isolated or rural Māori communities receive sub-standard water infrastructure. They should not be expected to pay charges commensurate with city or town supply consumers.

Tauranga moana mana whenua continues to be impacted by the historical effects of raupatu. The city infrastructure is built on mana whenua land assets taken e.g., Oropi water catchments, Te Maunga Wastewater system including title areas to Rangataua. Many of these systems have adversely impacted on Maori communities in yet they don't have access to services e.g., Matapihi with the Southern Pipeline and Romai Marae.

Obligation to Review and Publish Charges

287. Under proposed section 332 the board of a water services entity must publish the charges that apply to its annual billing period and any changes to them.

288. However, the board is not required to do so in respect of charges that the board considers to be customised or otherwise unusual.

289. **Relief sought:** We do not support this provision. It is important that transparency is retained with respect to customised or unusual charges, which should be able to be justified, to maintain fairness.

Chief Executive of Water Services Entity may Discount Charges

290. Proposed section 333 permits the chief executive of a water services entity may discount any charges that the entity's board has set, a power which overrides the board's authority to set charges and the charging principles.

291. **Relief sought:** We support the retention of this provision. It allows flexibility for discounts to be made on a case-by-case basis.

Charges for Water Services may be Averaged Geographically

292. Proposed section 334 authorises a board of a water services entity to charge geographically averaged prices for the water services, or charge geographically average prices at different scales for different service types and different classes of consumers.

293. It also permits a board not to charge a geographically averaged price for certain reasons, including that communities receive a higher or lower level of service than is generally provided elsewhere within those boundaries, or a water services entity has taken over a failed drinking water supplier.

294. **Relief sought:** We support the retention of this provision. Again, it allows flexibility to meet the needs of isolated or rural Māori communities where there is limited service provision available to them.

Liability for Water Services Charges in Respect of Māori Land

295. Proposed section 322 of the 2022 Entities Act sets out how charges are to be applied to Māori land in the service area of water services entity:

1. Where the land has only one or two owners, the owners will be required to pay for the water services.

2. If the Māori land is owned by multiple people and is also leased, the lessee will be required to pay for the water services, unless the lease states that the owners will be liable to pay the water services charges.

3. If Māori land in multiple ownership is subject to an occupation order, the holder of the occupation order must pay for the water services, unless the occupation order states that the owners will pay the water services charges.

4. If Māori land is owned by more than 2 people, the owners collectively are responsible for the water services charges.

5. If the Māori land is in a trust, the trustees are responsible for paying the water services charges.

296. **Relief sought:** This provision requires amendment to ensure adverse consequences do not befall Māori landowners:

1. It is not necessary for persons occupying Māori land to hold an occupation order. Occupation arrangements may be formalised in a range of ways – by an occupation order, a license to occupy or a lease – but they may also remain informal where there is agreement between the owners. However, such a situation either falls outside of new section 322, or arguably renders owners liable. An amendment is required to remove reference to an occupation order and instead focus on the "occupier of the land"[38]. This captures informal arrangements, occupation orders and licenses to occupy, and importantly, sets a default position that does not place liability on owners or trustees.

2. Proposed section 322(6) is unclear and requires clarity. Until we are certain as to its meaning, we can offer no suggested amendment.

3. We suggest the following amendments to proposed section 322:

322 Liability for water services charges in respect of Māori land

297. <u>If Māori land in multiple ownership is occupied through an arrangement other than a lease, the occupier of the land</u> is liable to pay water service charges (other than trade waste charges) for the Māori land unless the <u>arrangement</u> provides for the owners or trustees to pay the water services charges.

Māori Reservation Land or Land on which Marae or Urupā Located

298. Proposed section 322 makes no reference to Māori reservation land or land on which marae or urupā located. We do think it appropriate that a bespoke arrangement is developed for liability for water services, if any, for this special category of whenua.

299. **Relief sought:** We consider that it is appropriate for the WSL Bill to provide for regulation-making powers to accommodate bespoke arrangements for this category of whenua, and recommend an addition to proposed section 210(1) as follows:

1. <u>Providing for water services charging arrangements, which may include charging exemptions, relating to Māori reservation land or land on which marae or urupā are located.</u>

Limitation on Trustee Liability

300. The policy intent behind new section 323 of the 2022 Entities Act appears to be that:

1. trustees of a Māori land trust are not personally liable for water services charges in respect of Māori land;

2. instead, any water services charges are to be paid from any income derived from the land and received by the trustees on behalf of the beneficial owner or owners; and

3. if the land does not produce enough income to pay the charges, trustees can provide evidence to the water services entity of trust income, and they will only be required to pay the amount that the trust income can accommodate.

[38] The language used in new section 207(2)(b).

301. **Relief sought:** We support the retention of the intent of this provision. Not all Māori land trusts produce income. Further, to hold the trustees personally liable would discourage owners from acting as trustees or putting land into trust.

1. However, we do consider that amendment is required to new section 323 to make the clause clearer and to meet the policy intent. In particular:

2. Expressly stating that trustees are not personally liable is particularly important, as most Māori land trusts do not have a corporate trustee.

3. The reference to income should be amended to make clear that it is to 'net income' (i.e., income less expenses) as opposed to gross income, which does not subtract expenses. This is consistent with the policy intent that no payment is required if the trust does not have the funds.

4. The clause should be clarified to confirm that the charges do not accumulate across income years.

302. We suggest the following amended section 323:

323 Limitation on trustee liability

1. Trustees are not personally liable for water services charges.

2. Liability for charges in any given income year is limited to the amount equal to the net income derived from the land and received by the trustees on behalf of the beneficial owners of the land. For the avoidance of doubt, unpaid charges do not accumulate from income year to income year.

3. Trustees seeking to rely on subsection (2) must, on request by a water services entity, provide copies of any annual financial statements provided to the beneficial owners by the trustees.

4. This section applies to all trustees who hold or manage Māori land under section 322.

Powers of Entry and Inspection

303. Proposed section 371 gives compliance officers power to enter onto property for specified purposes related to their role:

1. Where the property is a Māori reservation, or marae or urupā land, the section requires the compliance officer to obtain the consent of the owner.

2. If the property is Māori land, the compliance officer must give reasonable written notice to the owner or owners before going onto the property.

3. If the land is Māori land owned by more than 10 people with no clear management structure or trust, the compliance officer must give the reasonable written notice to the trustees of the principal marae of the hapū associated with the land before entering onto the property.

4. If the land is a reserve vested in a PSGE and managed by another body than the PSGE, notice must be given to both the PSGE and the managing body.

304. Powers must be exercised in accordance with the Search and Surveillance Act 2012, which requires a search warrant.

305. We support the prohibition on entering into reservation, marae, or urupā land without permission of the owners. These can be wāhi tapu and have cultural protocol which must be observed by the person entering onto the land. Contacting the trustees prior to going onto the land ensures that the necessary tikanga can be communicated to the compliance officer or an appropriate person can accompany the compliance officer.

306. We are concerned about the notification requirements for Māori land set out in new section 371(7) and consider they should be amended. In particular, the provision allows the trustees of the principal marae of the hapū associated with the land to be notified before a compliance officer enters onto Māori land with more than 10 owners and no clear management structure. As stated above, we consider notification to those trustees cannot replace notification to the owners of the land.

307. Further, for the reasons identified above, we do not support the very limited reference to land vested in a PSGE under a Treaty settlement Act and managed by an administering body that is a local authority.

308. **Relief sought:**

1. Proposed sections 371(6) and (8) should be merged and amended as per our submission points above on works on Māori land (i.e., incorporating the new definition of "other Māori land". New proposed section 371(6) should read:

- A compliance officer must not enter any other Maori land unless, before entering, the compliance officer has given reasonable notice in writing to the owner (or owners) of the land.

2. Proposed section 371(7) should be amended. Given the provision concerns entry and inspection of whenua we consider that notice to the marae (not just the principal marae) of the hapū associated with the land could assist in notifying the owners. However, that should occur after reasonable efforts are made to contact some of the owners listed on the Māori Land Court Records. We suggest the following wording:

- However, if the land referred to in subsection (6) is owned by more than 10 persons with no clear management structure or is owned by more than 10 persons and not vested in a trustee, the compliance officer must not enter the land unless, before entering the compliance officer:

(a) has reasonably attempted to contact the owners listed on the Māori Land Court records; and

(b) has given reasonable notice in writing to the trustees of the marae of the hapū associated with the land; and

(c) published a notice on an Internet site maintained by or behalf of the Maori Land Court or in the Maori Land Court Pānui (or both) relating to its intention to enter and inspect the land; or

(d) served notice on the Registrar of the Maori Land Court in accordance with section 181 of Te Ture Whenua Maori Act 1993 of its intention to enter and inspect the land.

Power to Enter Place Without Search Warrant

309. Proposed section 372 gives a compliance officer a power to enter onto property without a search warrant despite new section 371, if the compliance officer reasonably believes the search is required in relation to a specified serious risk. A specified serious risk includes serious risk of illness, injury, or death, to public health, and to water services infrastructure. The same notice requirements set out in new section 371, in relation to Māori land, apply.

310. **Relief sought:** We repeat our concerns as above and oppose this section.

Protection of Māori Land Against Execution for Debt

311. Proposed section 388 maintains the rule set out in Te Ture Whenua Māori Act that Māori land or an interest in Māori land cannot be used to discharge a debt held by that person. Where remedial or other action has to be undertaken on the person's land and the Court orders the owner of the land must pay for it, or where a person is fined for an offence under the 2022 Entities Act, the person's interest in Māori land cannot be used for payment. This protection does not apply to any money made from the person's interest in Māori land and received by them.

312. **Relief sought:** We support retention of this provision. This maintains the principle, set out in Te Ture Whenua Māori Act, that Māori land cannot be used to discharge a debt to avoid further land loss.