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## Christchurch City Council submission on the Water Services Entities Bill

1. Christchurch City Council (the Council) thanks the Select Committee for the opportunity to provide comment on the Water Services Entities Bill (the Bill). We suggest that the Select Committee travels to Ōtautahi Christchurch and across the motu to hear first-hand the views of local communities. We recently welcomed the Select Committee to Christchurch to discuss the Natural Hazards Insurance Bill, and we hope this valuable experience has led to a deeper understanding for members of the issues that Christchurch faced post-quakes. We would also like to be heard in support of this submission, as we have a lot of valuable experience and knowledge that will help navigate the issues in this Bill.
2. The Council understands the need for change in the way three waters services are delivered in New Zealand. We also agree with the intention of the reform, in particular to increase the scale of water service entities (WSEs) with capacity to increase borrowing to the levels required to make a step-change in the quality and reliability of services able to be provided. We all know that significantly more investment is needed.
3. It is not the case that those who oppose elements of the reform wish to remain with the status quo. This is certainly *not* the case for our Council. However, we are concerned about the timeframes that are being proposed to create what will be some of the largest companies in New Zealand's history. The sheer scale of the reform has the ability to get in the way of achieving the objectives, if it is not done correctly.
4. There are two issues with scale which need to be raised. The Government knows (and we agree) that scale is required to achieve the outcomes it seeks in terms of infrastructure that supports safe drinking water, which is taken from rivers or aquifers, and high-quality wastewater and stormwater that is discharged to the environment, including water bodies. However, the restoration of Te Mana o Te Wai requires proximity to the water bodies with mana whenua and communities working side-by-side, with the resources to address historic degradation brought about by a range of catchment issues. This cannot be left to WSEs to resource – the reasons for degradation are not solely related to take and discharges (consented or otherwise) - and requires Government funding.
5. We were disappointed the Government declined to address Recommendation 44 of the Governance Working Group, which simply asked the Crown to confirm to iwi and councils the size of investment required to address issues of historic degradation of waterways and inequalities in the provision of water services. Without a statement of the scale of the problem to be solved, there is a genuine fear that the Government has let itself off the hook for contributing to this investment from taxation, as opposed to charges being applied to customers of the relevant WSE.
6. In our opinion, there are some critical changes to the model proposed by the Government that could enhance the feasibility and ultimate success of the reforms.

7. Below is a summary of the fundamental issues that need further consideration. A detailed submission is attached, which provides substantive feedback on these key points and addresses specific clauses of the Bill.

## Christchurch City Council should maintain responsibility and ownership of stormwater assets

8. There is a view that flood management is a role undertaken by regional and unitary authorities only. In Christchurch, the last local government reform in 1989 transferred the functions of the Christchurch Drainage Board to the City Council. We therefore operate more like a unitary authority in this respect. The Bill and the purpose and role of the entities proposed in its current form fail to reflect the integrated nature of stormwater management and create significant risks for our eco-systems and infrastructure.
9. Stormwater management is integral to flood management and land drainage, and their environmental impact is very much influenced by the activities that take place in each catchment. We have a fully integrated stormwater management system which includes public and private land, parks and reserves and roads and waterways.
10. The net benefits of the case for transferring stormwater infrastructure to the proposed new water entities has not been made with sufficient robustness, nor have the implications of doing so been fully understood. Without having this understanding, it seems likely that the objectives of this transition will not be realised. It is also unclear the extent to which the WSEs would manage stormwater assets for their recreational, ecological and cultural values.
11. The ownership and management of the stormwater system is complex and fragmented, involving councils, transport authorities and private property owners. This makes it virtually impossible to determine 'users' in the same way as the other water services, and to determine who would drive priorities of flood management under the Bill's proposed structure.
12. It also remains unclear how this service will be charged for, as a volumetric charge would not work for the stormwater function. In this way, and many others, stormwater is fundamentally different from the two other water services.
13. We acknowledge that substantial investment is required elsewhere in the country to confront the legacy issues of underinvestment, however there is insufficient evidence to suggest that all stormwater services can, and should, be transferred to the entities in July 2024.
14. As set out in the attached submission, we accept that there will be areas where the transfer needs to happen at the same time, however in our case, and probably other large metros like Auckland, the full transfer of stormwater should be deferred until the relevant councils and WSEs fully understand how this would work in practice.

## Our communities must be engaged in local decision making, and the Christchurch City Council, representing the largest portion of population in the entity, must be appropriately represented

15. To be successful in the implementation of legislation, both central and local government must support our communities to understand legislation as it applies to them. At a time when there are so many reform processes underway, this becomes even more critical.
16. Ensuring that the Bill provides clarity on the respective roles and responsibilities of water entities and local government, particularly in regard to important decisions at the forefront of community planning such as climate change, adaptation, and land use, will be important to enhance community engagement, collaboration and confidence in a new service delivery model.

17. Under this model, priorities will be set by a water company that has quasi-commercial imperatives (similar to a project management company). It is essential that the prioritisation decisions come back to the people, and by catchment within regions rather than at a national level.

18. Our community told us in a 2021 survey that they want to have a say in the way that three waters are provided, and that they should be managed and operated locally by people who understand the area. Proximity of decision-making to the community, enabling local voices to be heard, is critical.

19. There is an element of accountability in the current relationship between elected members and their communities, and we are concerned this is missing from the current proposed model. Without the ability to hold decision makers to account, communities may struggle to be heard.

20. To ensure this doesn't occur, the ability for communities to engage and drive priorities at a local level must be facilitated and enabled. Active and informed representation from mana whenua and community groups will also require robust support and resourcing to be in place for representative groups and individuals.

21. It is possible that the sub-regional groups (Regional Advisory Panels (RAPs)) could be given a far more important role in priority-setting and that the Regional Representative Groups (RRGs) be required to take their input into account. It is really important that the WSEs are plan-takers not plan-makers.

## The entities should not be required to take on debt unless it relates to matters in the scope of their work

22. The new clause that has been added to the Bill which allows the Crown to transfer any spending undertaken in relation to this reform to the entities – despite the entities not being formed at the time the spending occurred – is incredibly concerning.

23. This lacks accountability and transparency, and encumbers the entities with more debt that will need to be paid by our communities in the coming years. We note that this is intended to be in addition to the "Better Off" funding to be provided to councils and half-funded by the WSEs through additional debt. We do not agree that any of the "Better Off" funding should be added to debt, unless it is applied to a purpose of the WSE. This clause needs to be amended to ensure that the entities do not take on any debt that is not specifically related to their function. The Government needs to have 'skin in the game' and should be contributing directly to the setup costs of the model of its own making.

## There are too many unanswered questions, which hinders our ability to meaningfully engage

24. Councils must have the opportunity to engage in meaningful partnership with the Government as we address critical issues such as the future of water services, in a way that drives better wellbeing outcomes for our communities.

25. We have been appealing to central government to ensure full coordination and close collaboration across all of the central government agencies undertaking legislative reform to ensure these are managed in a holistic manner, and that local knowledge is an integral part of the process. The disjointed way in which reforms are rolling out is limiting the ability of local government to engage in a meaningful way, despite the reform package bringing substantial change to our core work programmes. A more integrated approach to the reform package is urgently needed.

26. We also need urgent clarity on some of the matters that are critical to our core planning processes and functions. Without the knowledge of how the debt transfer will occur, and the qualifying matters for how this debt is determined, how can we continue our forward planning? The lack of certainty of such an important matter runs the risk of some councils being set up to fail – especially smaller councils whose debt to revenue ratios could be disproportionately affected.

27. We have been in discussions with the Department of Internal Affairs (DIA) in relation to the unbound definition of infrastructure assets in this Bill. We have provided separate advice in a supplementary submission, and request that this is treated as a necessary amendment rather than a suggestion.
28. We remain committed to actively and positively engaging with you on the reforms, to ensure the best outcomes for our community. The detailed Council submission on this Bill is attached (**Attachment A**), which provides comment on the issues identified above, as well as detailed feedback on how to address the concerns and gaps identified in the Bill.

For any clarification on other points within this submission please contact David Griffiths, Head of Strategic Policy and Resilience (david.griffiths@ccc.govt.nz).

I look forward to the opportunity to speak to this submission.

Yours faithfully

Lianne Dalziel

**Mayor of Christchurch**

## **Attachment A:** Christchurch City Council submission on the Water Services Entities Bill - Detailed Submission

1. Christchurch City Council (the Council) thanks the Select Committee for the opportunity to submit on the Water Services Entities Bill (the Bill).
2. Firstly, we would like to reiterate that we do not support this model, as has been proposed. While we agree with the need for change, and the benefit for economies of scale, we consider this could better be done through a regional structure that affords local communities the ability to drive priorities. This would enable community driven decision making, with full awareness of the local issues. We do not believe this has been sufficiently considered in the proposed model.
3. Despite this, we remain committed to working with central government in a constructive manner. This Bill covers complex issues that local government has developed expertise in over many decades, and we have provided feedback on most sections of the Bill to reflect this expertise, which is detailed in the attached table.
4. While the Bill contains broad provisions and concepts, it is short on detail of the critical elements that councils and all stakeholders need to better understand, and that the Government needs to be well informed about before making its decisions. The consequences of these broad provisions are not clear and could be potentially wide ranging.
5. We consider that drafting this Bill in isolation of the companion piece of legislation on the establishment of the water services entities (WSEs) is undesirable and could lead to stakeholders having less than a full understanding of the reforms' impacts. It also creates a risk that there will be gaps in the final legislation, and this has the unintended consequence of hindering the ability of stakeholders to provide specific and relevant feedback. In view of the significant public interest in the reforms, the Council strongly recommends that the Government undertakes additional consultation with stakeholders before finalising this legislation to ensure that the changes to three waters governance arrangements are fully understood.
6. The timeframes proposed for this reform appear increasingly unrealistic. The extent of the work required to bring the WSEs into existence is huge, yet there is less than two years to finalise the legislation and complete the establishment process. More information on the timeline to achieve this is required.
7. Below we have summarised our key concerns, and the areas where urgent clarification or attention is required. This is set out in three parts:
    - Our key issues with aspects of this Bill
    - Our need for clarity on our future role in our key three waters' functions
    - A detailed table of feedback on each section of the Bill.

### *The inclusion of stormwater creates significant risks for our eco systems and infrastructure*

8. For over 20 years, we have operated a multi-value approach to stormwater management, focusing not just on drainage (pipes and pumps), but also on integrating cultural, ecological, landscape, recreational and heritage values into the design of stormwater infrastructure, and has significant investment in this area[1].
9. We have a fully integrated system which includes public and private land, roads and waterways, meaning that ownership and management of the stormwater system is complex and fragmented – key owners include council, transport authorities and private property owners. This all makes it virtually impossible to identify

[1]The 1989 local government reorganisation transferred the functions of the Christchurch Drainage Board to the Christchurch City Council. The functions of the drainage board included providing for watercourses, water outfalls, banks or defences against water as well as drains and wastewater treatment. We therefore operate more like a unitary authority in respect of stormwater and flood protection (as well as wastewater).

'users' in the same way as other services, and to determine who would drive priorities for flood management under this proposed structure.

10. It is important to note that integral to the development of the Council's comprehensive stormwater network discharge consent has been extensive involvement by Papatipu Rūnanga throughout the process. Further, although the Council's Te Wai Ora o Tāne Integrated Water Strategy was adopted prior to the promulgation of the National Policy Statement for Freshwater Management 2020, it nevertheless reflects the principles of Te Mana o te Wai.
11. We consider that Te Mana o te Wai requires a true ki uta ki tai (mountains to sea) approach, however separation of land use (Council) and stormwater (WSE) responsibilities creates a new barrier to achieving this.
12. Our stormwater facilities are key parts of our city's greenspace and provide significant co-benefits through recreational, ecological and cultural services. There are also significant implications for the considerable drainage infrastructure in our road corridors – kerbs and channels and some blue-green infrastructure such as tree pits, rain gardens and swales. Integrated services are incredibly complex and holistically managed. This also means that some of the key expertise in relation to stormwater management sits within our parks/planning and transport teams.
13. For example, stormwater management and ecological restoration form key parts of the regeneration of the Ōtākaro Avon River Corridor. The Corridor comprises 602 hectares and stretches from the city to the sea for 11 kilometres. The regeneration area contains streets, lawns and gardens that used to make up people's properties. A key aspect of the regeneration of this corridor includes stormwater management areas as well as wetlands and ponds. This is potentially in jeopardy if the reform proceeds in its current form, and it appears that those driving the reform may not understand the opportunities afforded when integrating stormwater management.
14. With this in mind, we are extremely concerned by the inclusion of stormwater in the proposed three waters infrastructure transfer. There are wide reaching consequences of this for our entire organisation, and our communities who enjoy the parks and wetlands that are part of our stormwater services (refer to attached photos for examples – **Attachment B**).
15. We consider the net benefits of the case for transferring stormwater infrastructure to the proposed new water entities has not been made with sufficient robustness, nor have the implications of doing so been fully understood, particularly for Christchurch. Without having this understanding, it seems likely that the objectives of this transition will not be realised. It is also unclear the extent to which the Southern WSE could manage stormwater assets as they relate to Christchurch for their recreational, ecological and cultural values.
16. If this transfer is to progress as proposed, we would support LGNZ's proposal to undertake a staged transition of stormwater, or to have a "joint arrangement" (between entities and council/s) to establish a unique transition pathway. It will be important that there is a negotiated approach to the transition, which takes into account the individual circumstances of our stormwater assets and service delivery.
17. We submit that:
    - **a.** the transfer of stormwater services in Christchurch City to the Southern WSE is excluded
    - **b.** the Bill includes a clear definition of stormwater services (as detailed in part 3 of this submission).

## *The definition of "infrastructure assets" must be clearly defined*

18. The definition of 'infrastructure assets' in Schedule 1 of the Bill is unsuitably vague and does not provide clarity on the intent of the provisions.
19. We have provided a supplementary submission to the Select Committee with detailed advice on this oversight. We consider that this definition must be refined, and the policy intent clarified as soon as possible.

## *Meaningful community input*

20. The underlying principle across all of our submissions relating to reform has been the same – community engagement is key to success. In August 2021, we surveyed Christchurch residents to get a better understanding of what features of three waters services were important to our community. The survey highlighted that while our residents largely agreed that all areas of New Zealand should have access to safe drinking water, they strongly supported a solution that keeps the management and operation of services. This is evident in the proportion of respondents who agreed that:

    a. We should have a strong democratic say in the way that three waters are provided in our area (88%)
    b. Our drinking water should be safe and chlorine free (81%)
    c. Three waters should be managed and operated locally by people who understand our area (77%)
    d. The three waters infrastructure assets should remain in local ownership (73%)
    e. Water rates should only be spent and invested locally (72%)

21. This legislation sets out a shift to an aggregated, regional approach to service planning and delivery that has historically been delivered at the local level. A shift of this nature requires local consultation and democratic input from the communities that are effectively pooling resources to access the advantages of greater scale and expertise.

22. We are concerned that minimal effort has been made to truly engage with communities through this process. People should be able to easily understand the system-wide reform programme, and it must be acknowledged that engagement doesn't end at the proposal stage, it needs to continue through implementation. People should have been taken along on this journey of reform, and we believe that this has not happened.

## *Regional Priority setting*

23. As we have stated above, community engagement needs to continue through implementation. A key concern for the Council is the lack of ability for local communities to influence the priority setting of the WSEs. Therefore this Bill, and all subsequent legislation, must address the criticality of having locally-driven priorities.

24. Whilst the Bill provides that Regional Representative Groups (RRGs) may establish Regional Advisory Panels (RAPs)[2] – there is no requirement for RRGs to listen to the RAPs. A RAP will help to provide a local voice and give input into the priority setting by the RRG (particularly if a territorial authority does not have a representative on the RRG). The importance of facilitating and enhancing this local voice must be acknowledged.

25. These sub-regional groups are the key to addressing the missing link between the RRG and the voice of local communities.

26. The Council submits that, unless other avenues are pursued to ensure locally-driven priority setting and the enhancement of the community voice in this model, the clauses relating to the RAPS are amended to provide that the RRGs must establish RAPs and must have regard to advice received from a RAP when making related decisions.

## *Representation*

27. Under the current proposal, the Southern WSE's service area includes twenty territorial authorities plus portions of two others. There is nothing in the Bill that makes any provision for taking population size or asset contribution into account in determining the territorial authority representatives to the RRG.

28. Christchurch's stake in the entity in terms of population, assets transferred and ability to advocate and influence, means we should expect to have a presence on the RRG commensurate with our stake. We will hold

[2] The details surrounding the RAPs will be included in the constitution for the WSE.

eight shares out of 32 shares under the new proposed shareholding structure (more than any other council in the entity), and are the second biggest metropolitan city in the country, yet we have not been guaranteed a position on the RRG.

29. The shares provide no tangible benefit in current form, and we request that consideration is given to using the shareholder model as a factor for representation. Having the Bill amended to provide the Council with permanent membership of the RRG, as well as any other representation requirements considered appropriate, would go some way to recognising our position.

30. We submit that the RRG must have provisions that will enable Christchurch to have a certain, and secure, representation on the RRG. It is critical that such a large customer base has appropriate representation.

## *First Constitution*

31. The Bill has many gaps in process and procedure, which it has been indicated will be set out in the constitutions for the WSEs. As we have said above, it is currently difficult to assess the adequacy of the provisions in the Bill, or understand the practical implementation, without seeing these documents side by side.

32. In this respect, the territorial authorities and mana whenua for each WSE area must be tasked with drafting the first constitution for that entity. We envisage that the first constitution for each entity will still be made by regulations, on the recommendation of the Minister, but that they will be drafted by the territorial authorities and mana whenua to whom they relate.

33. This acknowledges that one model constitution will not be fit for purpose for all WSEs. What is appropriate for the Northern WSE may well not be appropriate for the Southern WSE. Furthermore, it acknowledges that it is important to get this part of the reform workable from 1 July 2024.

## *Governance and Accountability*

34. We question whether the governance structure that is proposed in the Bill is both the optimal arrangement and fit for purpose. It has characteristics that are likely to be difficult to make work efficiently or effectively in practice. Should this be the case, the value proposition of the reforms will be at risk.

35. The Local Government Act 2002 (LGA 2002) provides a well-established governance and accountability framework for council controlled organisations which is clear and concise, and recognises the importance of accountability and transparency. Consideration should be given to modelling the governance and accountability framework for the entities on Part 5 of the LGA 2002 to the greatest extent possible.

36. We also submit that further provision must be made so that the territorial authorities have an opportunity to comment on, and receive, final accountability and reporting documents from the WSEs. Territorial authorities are likely to bring considerable expertise on such matters. The Council does recognise that arrangements would need to be made to ensure the territorial authorities are able to communicate their views as a collective. Such an arrangement is not without precedent.

37. Communities also need assurance that there will be clear lines of accountability throughout the new governance and representation arrangements. It is currently difficult to see how decision makers will be held to account, ensuring that they are acting in the best interests of the communities they represent.

## *Certainty urgently required on the transfer of debt and qualifying matters*

38. There is a lack of clarity as to how territorial authorities will transfer debt to the WSEs, including what borrowing will be eligible and the process being used to confirm final amounts.

39. The Council submits that there must be transparency on the mechanism that will be used to determine a 'fair' level of debt that is to be transferred to the new WSEs. Furthermore, there must be clarity on how territorial authorities will be fully compensated for any debt maturing after July 2024 that is unable to be transferred to the new entity. We are very concerned that debt that councils have incurred in relation to three water services

will not be transferred to the WSEs, leaving councils to pay off debt for assets they will no longer have control over.

40. There is little in the Bill that explains what will happen to debt or how the Government will 'settle up' with territorial authorities in this regard, apart from some oblique references to 'liabilities' in the transitional arrangements in Schedule 1. Given the amounts involved[3], and the potential impact on debt to revenue ratios, this matter needs to be addressed clearly and fairly in this legislation.

## *Central government should be responsible for the decisions it makes in this reform*

41. While much of the Bill reflects the Exposure Draft (other than the subsequent changes to align to the recommendations of the Working Group on Governance, Representation and Accountability), we note that a new clause has been added at the end of Schedule 1. This clause allows for the Crown to transfer expenses and capital expenditure to the entities, yet provides no explanation as to why this clause has been included now. The Council notes that this clause reflects section 23 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 but goes beyond what was included in that Act.

42. If the Government acts under this clause, then an unknown amount of Crown costs and debt will be transferred to the new entities. This starts these entities off in a worse financial position, with debt that cannot be allocated back to an asset.

43. The Council is of the view that the costs incurred by the Government for this reform sit with the Government, rather than with the customers of the entities. We are fundamentally opposed to the current spending of the Government being transferred to the new entities as additional debt to be paid off by our communities.

44. We submit that this clause should be deleted.

## *Unclear links between the Government's programme of reform*

45. Significant, complex and wide ranging reform is underway across resource management, water services, emergency management and the future of local government. Each of these inter-dependent legislative reform programmes impact on the roles and responsibilities of local government, and yet the future of local government is scheduled to be clarified last in the sequence.

46. We are being asked to respond piecemeal to multiple consultations, in the absence of a clear picture of the eventual shape of our roles and responsibilities. As a result of this lack of coherence, the Council is deeply concerned that inter-dependencies will be missed and unintended consequences will occur.

47. Of most critical concern to local government is the cornerstone planning statute in New Zealand, the Resource Management Act 1991, which is proposed to be replaced in this current term of Parliament. As the Minister for the Environment has said "it's a lot of work ahead for everyone, and we really encourage members of the public to engage"[4]. However, it is difficult to engage and provide feedback on how the Natural and Built Environment Bill, and the other related legislation, will dovetail with this Bill, restricting us and our communities in providing meaningful feedback.

48. The cohesion between the water reform and the resource management reform is unclear, and in some cases could be contradictory. Throughout the programme of reforms being undertaken, there is an inherent risk of misalignment in prioritisation and decision-making and the sequencing of the reforms has led to a very high risk of failure to achieve the intended outcomes. We strongly encourage DIA to work closely with other central government agencies that are undertaking legislative reform to ensure the overall change is managed in a holistic manner.

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[3] Christchurch City Council considers that our apportionment calculations provided for approximately $1.1bn of debt being transferred to a new entity in July 2024 should reform proceed.

[4] See https://environment.govt.nz/what-government-is-doing/areas-of-work/rma/resource-management-system-reform/overview/#minister-for-the-environment-hon-david-parker-talks-about-the-biggest-reforms-to-the-rma-since-its-inception

49. We submit that the Government needs to provide a summary clarifying how all relevant legislation will work together. Ultimately this would give some assurance that reforms are being effectively and appropriately managed, and will continue to be once the legislative review, reform and update are finalised.

## *The Council needs clarity on its roles and responsibilities alongside the WSE*

50. As we have submitted above, we believe the reform programmes lack clarity regarding local government roles and responsibilities. The three waters reform, in particular, impacts directly on over 300 Council staff and indirectly on the rest of our organisation. Certainty is needed, not only for our long-term planning and community awareness, but to support the wellbeing of our staff.

51. The Bill provides no direction on whether the WSEs will be responsible for key government priorities that have links to three waters services, and the associated roles currently held by councils in supporting community wellbeing, development and placemaking. Councils have a variety of planning processes and systems in place to align these critical roles (such as long-term planning, broader council asset management planning, resource management planning), so need urgent clarity on how the entities will integrate with, and utilise, council planning processes. Ensuring that the Bill provides clarity on the respective roles and responsibilities of WSEs and local government, particularly in regards to important decisions at the forefront of community planning such as climate change, adaptation, and land use, will be important to enhance community engagement and collaboration, and confidence and buy-in to the new model.

52. Below, we have highlighted some areas needing urgent clarification.

### a. *Helping communities plan for the future*

53. The lack of information on roles and responsibilities in this Bill, particularly relative to other ongoing reform processes, could hinder progress in key areas of critical work. For example, will the entities be responsible for working with and supporting communities to undertake adaptation planning for infrastructure at risk from climate change? This is an acknowledged priority of the Government, with the Ministry for the Environment's Coastal Hazards and Climate Change Guidance for Local Government (2017) repeatedly referencing the criticality of considering asset management alongside community adaptation planning through an intensive engagement-led approach with local communities.

54. Despite this criticality of an intensive engagement-led approach, no clear direction has been provided on where the responsibility for adaptation planning will rest when the new entities are in place.

55. As a Council, we have established a Coastal Hazards Adaptation Planning programme which works with communities and rūnanga in low-lying coastal and inland areas to develop adaptation plans to respond to the impacts of coastal flooding, erosion and rising groundwater. We need urgent guidance for our ongoing adaptation planning to understand if this responsibility will rest with local government (and if so, what ability will we have to influence the investment decisions of the entities?); or if the WSEs will play this critical role for our community (in which case, would they comply with existing adaptation plans?)?

56. Despite clause 13(f) stating that one of the operating principles of WSEs is "partnering and engaging early and meaningfully with territorial authorities and their communities" it is unclear from the Bill how this is intended to occur. Local government is at the forefront of decision making with communities, and we consider it a risk for all reforms if this strength is not acknowledged and utilised.

57. We submit that the Bill is amended to provide clarity on the respective roles and responsibilities of WSEs and local government. At the very least the Bill should incorporate a requirement to consult local government.

### *b. Placemaking, land use planning and infrastructure investment*

58. A close inter-relationship between land use planning and infrastructure provision is essential. Land use drives the need for infrastructure, and conversely, infrastructure enables land use/growth. These are all intertwined in our long term spatial planning.

59. In the current system, the Council has full sight across these interlinkages and systems. Achieving integration across planning and provision will be of paramount importance in establishing the WSEs' relationships with their member councils – who will continue to face uncertainty in the face of local government reforms.

60. We raised similar concerns in the Council's submission on the Exposure Draft for the Natural and Built Environment Act (NBA)[5], in comments about the role and effectiveness of the proposed Planning Committees we said:

    - Planning Committee decision making and NBA plans must take account of the significant local variation within regions. Achieving that objective will require proportionate roles in the planning committees in relation to sections of the NBA plans that address issues in their districts. Decision making on parts of proposed plans that affect sub-regional areas ought to be determined by the sub-regional group.
    - There should still be district decision-making for district-specific matters and provision for districts to set limits and other provisions relating to the built environment for their districts.

61. Stormwater, more than water and wastewater, is a product of land use both in terms of quantity and quality, and we integrate land use planning with stormwater management considerations in urbanised environments. For example, we use flood management areas (overlays in the district plan) to restrict development and require new builds to have higher floor levels, to mitigate the impact of flooding and reduce the cost of future intervention. The ability to utilise a broad range of tools to manage a broad range of infrastructure requirements needs to be recognised and maintained.

62. We submit that an entity's place in the wider system relative to councils (and other bodies) should be determined, and that it is clearly articulated how WSEs will be responsive and reflect local needs.

### *c. Consequential legislative amendments*

63. It is difficult for us to provide feedback or plan for the transition when there appears to be no coordination with this Bill and the other legislation that needs to be drafted to create the WSEs, set up the economic regulation and other required workstreams.

64. For example, we seek clarification on just how the WSEs will invoice and collect their charges, and how this will relate (if at all) to the Local Government (Rating) Act 2002 and the Rates Rebate Act 1973. The Bill is silent on the billing and collection systems that will need to be implemented, yet there is less than two years until WSEs come into force. Reassurance should be provided that the WSEs will be in a position to take on billing from day one, and that customers will be able to apply for relief under the Government's rates rebate scheme when rates are reduced and water services charges are introduced.

65. A related issue is that from 1 July 2024, territorial authorities will no longer be able to rate for water services activities, and territorial authority rates will reduce. However, transparency is needed as to how this will affect debt to revenue ratios for councils.

66. Furthermore, we also ask that detailed consideration is given to the interface between this Bill and other legislation that sets out powers of drainage boards, land drainage boards and the old catchment boards. The Christchurch District Drainage Act 1951, the Land Drainage Act 1908, provisions in Part 26, and Part 29 of the Local Government Act 1974, as well as the Soil Conservation and Rivers Control Act 1941 are all still in force and apply to the Council in various degrees.

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[5] https://ccc.govt.nz/assets/Documents/The-Council/Request-information/2021/Christchurch-City-Council-submission-on-NBA-exposure-draft.PDF

67. The relationship between these provisions and how they apply is incredibly complex. If Parliament does not address this mismatch of statutes and draft a new sensible regime of statutory powers for the WSEs, it is highly likely to derail any supposed efficiencies that will be created by this reform. Simply applying these statutes by a "necessary modifications provision" will be a missed opportunity to simplify this inefficient area of the law.

68. Another area of concern for this Council relates to bylaws. In particular, our water services bylaws effectively work as the administrative and legal mechanism to enable customers (property owners) to connect to our networks, to discharge wastewater and stormwater to them, or to receive drinking water from them, and enable us to protect our networks from damage or misuse.

69. Bylaws are local laws that regulate issues specific to a district, and that are not otherwise regulated[6]. Thought must be given as to how the matters regulated by water services bylaws will be managed during the transition, and once the new entities are established. For example:

    - Will these bylaw-making powers (and the bylaws themselves, including enforcement) transfer to the WSEs? Or will the new entities regulate using a different tool, or a similar tool with a different name – regulations, a standard, a specification, or some other form of secondary or tertiary legislation?
    - The Southern WSE includes 20 councils, which will all have water services bylaws, perhaps multiple bylaws, which will all regulate matters specific to their district. How will these work or transition under the new entity?
    - Will trade waste bylaws be included in the bylaw review deferral opportunity provided in the Bill (and if so, this should be reflected in the definition of "water services bylaw")?

70. We appreciate that more information will be provided in the next Bill, but more certainty is required for Councils to progress work planning.

### *The work required to produce the plans and strategies indicated - in the timeframes provided - appears underestimated*

71. We have made technical comments on the provisions relating to the asset management plan, the funding and pricing plan and infrastructure strategy in Part 3 of this submission. However, we have serious concerns about the extent and breadth of these documents given the size of the entities involved, and the timeframes for drafting these before the transition deadline. For example, it will be an enormous task for the Southern WSE to complete an asset management plan that covers most of the takiwā of Ngāi Tahu, as well as the other planning documents whilst still involving and engaging with the territorial authority owners.

Below, we have provided detailed advice for amendments that are required to ensure the Bill is fit-for-purpose, as well as comments on specific clauses of the Bill, including some we submit should be deleted.

[6] The bylaws are made using the bylaw-making powers in the LGA 2002 (sections 145 and 146), and must adhere to the processes in the LGA 2002 in terms of review, determinations and consultation (sections 155, 156, 158, 159 and 160).

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| 4 | **Te Tiriti o Waitangi** | The Council supports this clause. The Council acknowledges iwi rights and interests afforded to Ngāi Tahu as a treaty partner with the Crown, and recognises Ngāi Tahu as the mana whenua of its Takiwā. This Council notes and recognises the rangatiratanga of Ngāi Tahu as outlined in the Ngāi Tahu Claims Settlement Act 1998, and acknowledges that Ngāi Tahu assert mana whakahaere in the Takiwā. |
| 6 | **Interpretation** | The Bill defines **water services** as meaning services relating to water supply, wastewater, and stormwater.<br>• It would be desirable to include a definition of wastewater to make it clear that this also includes trade wastes. We submit the following would be appropriate:<br>"***wastewater*** *includes trade waste discharged into a wastewater system"*<br>• There is no clarity as to the meaning of stormwater and what is included and what is not. While most stormwater systems include a reticulated network, the bulk of the stormwater system is a network of above ground overland flow paths over public (e.g. parks) and private land, roads, and waterways. This means that stormwater management has a significant interface with the regulatory and land use planning system.<br>• The Council's submission is that **stormwater services for Christchurch City must be excluded from the coverage of the Bill**. On that basis, the Council submits that the following definition would be appropriate:<br>"***Stormwater services*** *means services relating to infrastructure, facilities and devices for the management of stormwater or for the purposes of land drainage including but is not limited to*<br>*(a) pipes and drains:*<br>*(b) waterways:*<br>*(c) kerbs and channels:*<br>*(d swales and detention ponds:*<br>*(e) flood protection infrastructure such as bunds or stopbanks:*<br>*(f) treatment or measuring devices or facilities*" |
| 11 | **Objectives of water services entities** | The objectives of the WSEs do not include an objective to act in the best interests of the territorial authority owners. The Council's submission is that this must be included in the objectives of the entities otherwise there is little link back to the territorial authority owners. This means that clause 11(e) would be amended to read "*(e) act in the best interests of present and future consumers and communities,* ***and the territorial authority owners****:*". |
| 13 | **Operating principles** | This clause sets out the operating principles of the WSEs. Despite clause 13(f) stating that one of the operating principles of the WSEs is "*partnering and engaging early and meaningfully with territorial authorities and their communities*" there is very little in the Bill elsewhere that gives territorial authorities much of a voice around water services. While territorial authorities will likely be amongst the customers of the entities the influence of customers and the community on how the entities will manage water services is very limited as the Bill is currently written.<br>The Council submits that the Bill should include explicit provisions to allow for territorial authority owners to have a voice greater than is currently provided. |

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| 15 | **Status of water service entities** | Despite each territorial authority having a share allocation, there is nothing in the Bill that provides any benefit to owning shares, other than to act as part of the mechanism to block privatisation. Shares held by the territorial authorities do not grant any degree of influence or control. As the Bill is currently written, whether a territorial authority owner has one share or 10 makes no difference as shares do not confer voting rights or any other rights (see clause 93(b)). Further, at clause 166, a territorial authority owner has no right, title, or interest (legal or equitable) in the assets, security, debts, or liabilities of a WSE.<br>More detail needs to be provided about the nature of these shares and what rights attach to these shares (if at all any) for example, a statutory right to attend an Annual General Meeting of shareholders. |
| 27 | **Establishment and membership of regional representative group** | The Council has previously submitted that the RRGs must reflect the proportional investment and service requirements of councils represented. Furthermore, the largest metropolitan authority in each entity must be guaranteed membership of the each RRGs. However, currently there is no proportionality provided for in the make-up of the RRG. Consequently, there is no certainty that the Council would be one of the six or seven territorial authorities with membership of the RRG for the Southern WSE.<br>The Council acknowledges that details on this matter might be included in the 'model constitution'. However, as there is no model constitution to evaluate it is impossible to determine the extent to which, if any, a greater number of shares provides any greater influence.<br>We strongly disagree with this approach and asks that this clause be amended to provide that the Council has confirmed membership on the RRG for the Southern WSE. We submit that clause 27 is amended by adding a new subclause (4) as follows:<br>**"*(4) Despite subclause (3), each entity's regional representative group must include at least one member from the largest territorial authority owner in the entity's services area.*"** |
| 29 | **Collective duty of regional representative group** | This clause sets out the collective duty of a RRG which includes performing or exercising its duties, functions, and powers wholly or mostly for the benefit of all communities in the entity's service area. What is meant by '**mostly** for the benefit of all communities in the entity's service area'? This needs to be further clarified – given the size and extent of the entities' service areas. |
| 32 | **Method of appointing territorial authority representatives to RRG** | Under this clause, there is a limited class of persons who may be appointed to a RRG in terms of the territorial authority members. The Council submits that this clause must be amended by deleting reference to chief executives and senior managers of a territorial authority. It is simply not appropriate from an accountability perspective to provide that council staff members are RRG members. Elected members are directly accountable to the community but council staff members are not so accountable.<br>Furthermore, there are no details in the Bill about how RRG members are to be appointed, or their terms of service. Presumably this is covered in the constitution but there is no model constitution to evaluate. |
| 38 | **Regional representative group must appoint board appointment committee** | This clause provides for the appointment of the board appointment committee and sets out the requirements for the collective expertise of the committee. The Council submits that subclause (2)(b) should be refined to refer to 'three waters network infrastructure' rather than the broad reference to 'network infrastructure industries', there should also be a reference to experience in public health, as well as customer service. |
| 43 | **Disputes between regional representatives** | It is appropriate to have a disputes resolution clause. However, subclause (3) provides that whether the regional representatives choose a binding process or a non-binding process, **each regional representative must—**<br>- jointly appoint an arbitrator or a mediator; and |

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| | | - **meet that regional representative's own costs of the process (so they are not met by the represented territorial authority or mana whenua).**<br>Therefore the territorial authority cannot reimburse/indemnify the regional representative's costs in a dispute. This sounds particularly onerous and will dissuade persons from taking on this position or from raising matters in dispute where it is proper to do so. The Council submits that clause 43(3)(b) is deleted. |
| **45** | **Establishment and membership of regional advisory panels** | The RAPs are a useful development. However, there is no requirement to have these panels (they are optional) and it is unclear the extent of their influence on the RRG. For example, it is unclear whether RAPs would have any more influence on the RRG and/or WSE than the customer and community "engagement" that WSEs must undertake.<br>The Council recommends that the Bill is amended to require RRGs to have one or more RAPs and that they are not limited to whole of area matters – they can specifically look at local matters.<br>The Council submits that the clause is amended as follows:<br>***45. Establishment and membership of regional advisory panels***<br>*(1) The constitution of a water services entity ~~may~~ **must** establish 1 or more regional advisory panels.*<br>*(2) Each regional advisory panel must include an equal number of—*<br>*(a) territorial authority panel members; and*<br>*(b) mana whenua panel members.* |
| **46** | **Role of regional advisory panels** | The Bill says that RAPs only provide advice. This isn't necessarily the same as reporting back to the RRG, and the extent to which RAPs have any influence on RRGs is unknown. This needs to be clarified as noted in our submission above on clause 45. We submit that new subclause (2) is included as follows:<br>*"**(2) When the regional representative group receives any advice from a regional advisory panel in relation to a matter, the regional representative group must have regard to that advice in its decision-making on that matter.**"* |
| **47** | **Collective duty of regional advisory panel** | This clause sets out the collective duty of the RAP which includes performing or exercising its duties, functions, and powers under legislation wholly or mostly for the benefit of all communities in the entity's service area. The Council submits that this clause should be amended to provide for a community area – not the entity's service area. The point of the RAPs is to provide a community voice and local knowledge, and a collective duty applying to the whole of the entity's service area would be incompatible with this goal. The following amendments would achieve this aim:<br>***47. Collective duty of regional advisory panel***<br>*A regional advisory panel for a regional representative group of a water services entity must perform or exercise its duties, functions, and powers under legislation—*<br>*(a) ~~wholly or mostly~~ for the benefit of ~~all~~ **the** communities in the ~~entity's~~ **panel's** ~~service~~ **geographic** area; and*<br>*(b) taking into account the diversity of the communities, and the diversity of the communities' interests, in that area; and* |

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| | | *(c) taking into account the interests of future as well as current communities in that area.* |
| **55** | **Application of Local Government Official Information and Meetings Act 1987 to regional representative panel** | The Council acknowledges that meetings of RAPs will need to comply with the meeting provisions in the Local Government Official Information and Meetings Act 1987 (LGOIMA) for RRGs. However, it is not clear whether RAPs are separate entities for the purposes of official information under the LGOIMA. This should be clarified to avoid confusion, and the heading should be corrected so that it refers to the regional **advisory** panel. |
| **59** | **Accountability of board members to regional representative group** | This clause provides that the board members are accountable to the RRG but the Council submits that they should also be accountable to the territorial authority owners. Otherwise, the share ownership structure is essentially meaningless. The Council submits that subclause (2) should be amended as follows:<br>*"(2) Board members of an entity are accountable to the entity's regional representative group* ***and the territorial authority owners*** *for performing their duties as board members."* |
| **71** | **Resignation of board members** | Clauses 71 and 37 should be consistent in the way they describe the resignation process. Clause 71 refers to giving written notice, clause 37 does not. |
| **73** | **Board must act consistently with objectives, functions, operating principles, and statement of intent** | This clause is self-explanatory but the Council submits that this clause should also refer to the statement of strategic and performance expectations so that the clause reads as follows:<br>*"The board of a water services entity must ensure that the entity acts in a manner consistent with its objectives, functions, operating principles, ~~and~~* ***the*** *current statement of intent****, and the statement of strategic and performance expectations."*** |
| **84** | **Court actions requiring or restraining board or board members** | If the Bill is not amended to provide that the Council has confirmed membership of the RRG, then the Council submits that this clause should be amended to provide that territorial authority owners should also be able to apply to court for an order restraining the board or the board members of the WSE. |
| **91** | **What constitution must contain** | This is an extensive provision setting out what the constitution must contain however, the Council submits that the clause is amended to provide for greater detail as to how territorial authority representative owners are appointed, including addressing the matter of proportionality. The clause should also require that each constitution includes provision for an Annual General Meeting to which the territorial authority owners (shareholders) are entitled to attend. For example, new paragraph (p) could be added as follows:<br>*"****(p) the procedures for the calling of an annual general meeting, and the attendance of the territorial authority owners.****"* |
| **93** | **Effect of constitution** | This clause includes the provision that a constitution cannot confer decision-making rights weighted by shares held by a territorial authority owner for any matter. The Council disagrees with this provision to the extent that membership of the RRG must be linked to proportionality of the territorial authority owners. |
| **94** | **First constitution of water service entity** | Clause 94 provides that the first constitution of a WSE is the model constitution for the entity set out in regulations. At present, clause 94 must be read with clause 206(2) which provides that the Minister must, before recommending the making of the model constitution in relation to a WSE, engage with the territorial authority owners of the entity and mana whenua of the service area. However, the Council submits that the |

| Clause no. | Clause | Submission |
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| | | clause is redrafted as follows:<br>***94. First constitution of water services entity***<br>*(1) The first constitution of a water services entity is the model constitution for the entity set out in regulations.*<br>***(2) To avoid doubt, the first constitution for one entity may differ from the first constitution for another entity.***<br>***(3) The territorial authority owners and mana whenua whose rohe or takiwā is within the service area of a water services entity must draft the first constitution for the entity***<br>*(2) But, when that model constitution is first amended or replaced under section 95 or 96,—*<br>*(a) that model constitution as so amended or replaced must set out all provisions of the entity's constitution (including any unchanged from that model constitution); and*<br>*(b) the regulations setting out the model constitution for the entity are revoked.* |
| **95** | **Process for amending or replacing constitution** | Under this clause the RRG may propose amendments to or a replacement constitution of a WSE. A proposed amendment to the entity's constitution or a proposed new constitution for the entity must be approved by the Minister before it is effective.<br>However, there is no requirement to send the proposed amendments to the territorial authority owners (shareholders) for consideration before the amendment proceeds.<br>The Council submits that this clause should be amended to provide that notice **must** be sent to the territorial authority owners in the first instance so that the territorial authority owners approve the amendment or replacement of the constitution. Clause 95 should be amended as follows:<br>***"95 Process for amending or replacing constitution***<br>*(1) A regional representative group may propose to amend the water services entity's constitution or adopt a new constitution for the entity in the manner provided in this section.*<br>***(1A) Before the proposed amendment or new constitution is approved by the minister, the regional representative group must consult with the territorial authority owners on the proposed amendment or new constitution.***<br>***…".*** |
| **96** | **Minor or technical amendments** | This clause allows the RRG to make minor or technical amendments to the constitution. Notice of the amendments must be sent to the monitor, and if no objection from the monitor is received within 20 working days after the date on which the notice is served (or any longer period specified in the entity's constitution), the group may make the amendment.<br>The Council submits that this clause should also be amended to provide that notice **must** be sent to the territorial authority owners in the first instance. The clause should also explain on what grounds the monitor may reject any amendments. |
| **97** | **Qualifications of regional representatives, regional advisory panel members, and** | This clause provides for the qualifications of regional representatives, RAP members, and board members, and sets out those persons who are disqualified from these roles. In particular, territorial authority members are disqualified from being appointed as board members but regional council members are not so disqualified. The Council queries why regional council elected members could still be appointed and submits that |

| Clause no. | Clause | Submission |
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| | **board members** | regional council elected members are treated in the same way as territorial authority elected members.<br>The clause should also be clarified in relation to the position of former elected members. Are these persons able to be appointed as board members or not? |
| **100** | **When person is interested** | This clause sets out when a board member, regional representative or RAP member is interested in a transaction. The Council submits that further clarification is needed. Subclause (1)(e) refers to "is otherwise directly or indirectly interested in the matter". Is this intended to cover non-financial interests? If it is this needs to be further defined in the clause. |
| **101** | **Obligation of board member to disclose interest** | This clause requires the board member to disclose the interest as soon as practicable after the board member becomes aware that they are interested. However, the Council submits that such disclosure should be made without delay. |
| **102** | **Obligation of regional representative member to disclose interest** | This clause requires the regional representative to disclose the interest as soon as practicable after the representative becomes aware that they are interested. Again, the Council submits that such disclosure should be made without delay. |
| **103** | **Obligation of regional advisory panel member to disclose interest** | This clause requires the panel member to disclose the interest as soon as practicable after the representative becomes aware that they are interested. The Council submits that such disclosure should be made without delay. |
| **104** | **What must be disclosed** | As with clause 100, the Council submits that the clause is clarified as to whether it covers non-financial interests. |
| **107** | **Permission to act despite being interested in matter** | The Council submits that there is a drafting error in clauses 107(3) and 107(6) with the reference to co-chairs. Co-chairs are adequately covered in subclauses (5) and (8). These references should be deleted. |
| **115** | **Safeguarding independence of water services entities** | The clause provides protection in respect of the performance or exercise of a duty, function, or power under the Bill, but it leaves the matter unclear with respect to any other statutes, for example the Water Services Act 2021.<br>The Council would like the clause to be clarified as to whether directions can be given under other statutes. |
| **116** | **Obligation to maintain water services** | This clause requires a WSE to continue to provide water services and maintain its capacity to meet its obligations under the Act. However, the Council queries the reference to proposed assets used or proposed to be used by the WSE to provide water services. What exactly are the implications for proposed assets? Does this mean once a decision is taken to build an asset the decision cannot be revoked? This goes further than section 130 of the LGA 2002 and the Council queries why this is the case. |
| **117** | **Contracts relating to provision of water services** | This clause allows for a WSE to enter into a contract for any aspect of the operation of all or part of water services for a term not longer than 35 years. The Council would like confirmation that contracts may be entered into with council controlled organisations and council controlled trading organisations. |
| **131** | **Preparation or review of Government policy statement** | Clause 131 requires the Minister, when preparing or reviewing a Government policy statement, to consult the WSE; the RRG of each WSE; Taumata Arowai–the Water Services Regulator; and other persons, and representative groups of persons, who have an interest in water services in New Zealand.<br>The Council submits that the Minister should also be required to consult expressly the territorial authority owners when preparing a |

| Clause no. | Clause | Submission |
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| | | Government policy statement. |
| **132** | **Water services entities to give effect to Government policy statement** | The Council asks that the Government confirms that it will provide funding in respect of Government policy statements. At present the Minister can issue these statements but there is no certainty as to funding to give effect to Government policy. |
| **135** | **Regional representative group must issue and review, and may replace, statement of strategic and performance expectations** | The Council submits that this clause needs to state clearly by when the first statement of strategic and performance expectations needs to be prepared. The Council also submits that an additional provision is included that ensures that territorial authority owners are involved in the preparation of these statements. For example,<br>***"00. Engagement on statement of strategic and performance expectations***<br>***The regional representative group for a water services entity must engage with territorial authority owners on a proposal to adopt a statement of strategic and performance expectations in accordance with section 202."*** |
| **141** | **Water services entity must respond to Te Mana o te Wai statement for water services** | The Council notes that there is a hierarchy of obligations in Te Mana o te Wai that prioritises:<br>(a) first, the health and well-being of water bodies and freshwater ecosystems;<br>(b) secondly, the health needs of people (such as drinking water) ; and<br>(c) thirdly, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.<br>The Council submits that there could be conflicting priorities between the implementation of Te Mana o Te Wai and the functions of new entities: "to provide safe, reliable, and efficient drinking water, wastewater, and stormwater services in its area." The Bill does not give any particular weight to technical reasons or human health reasons that may refute a statement focussing on the health and well-being of water bodies and freshwater ecosystems. |
| **142** | **Obligation to publish response to Te Mana o te Wai statement for water services** | It is not clear why this clause allows for a delay of up to a period of up two years to respond to a Te Mana o Te Wai statement, even with undertaking consultation. |
| **143** | **Purpose of statement of intent** | The Council submits that the purpose of the statement of intent is to state publicly the water entity's activities, intentions and objectives, as well as the accountability and governance settings to which the board will be held to account. It provides an opportunity for shareholders to influence the water entity's direction. In this vein, this clause should also include a reference to providing an opportunity for the RRG and the territorial authority owners to influence the direction of the entity. This would reflect section 64 of the LGA 2002 and the provision relating to statements of intent for council controlled organisations. The amended clause would read as follows:<br>***143. Purpose of statement of intent***<br>*The purpose of a statement of intent is to promote the public accountability of a water services entity by—*<br>*(a) setting out the entity's strategic intentions; and*<br>*(b) providing a base against which the water services entity's actual performance can later be assessed;* ***and*** |

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| | | ***(c) providing an opportunity for the regional representative group and the territorial authority owners to influence the direction of the entity.*** |
| **144** | **Board must prepare statement of intent** | The Council agrees that the statement of intent should be an annual document. However, subclause (3)(a) is ambiguous and it should read that a statement of intent must be for the year following the year in which it is prepared and the two years following that. The Council also submits these references to financial years need to be streamlined throughout the Bill because different terminology is used in different clauses in the Bill. |
| **145** | **Content of statement of intent** | The Council submits that there needs to be a complete rethink of this clause. As a general comment, it would be more appropriate for the details of this clause to be included in Schedule 3 of the Bill. (Compare with the provisions in Schedule 8 of the LGA 2002.)<br>In terms of clause 145(1)(c)(i), the Council does not see how the board can "give effect to... outcomes....". Outcomes are the end goals. Rather, the entity should give effect to the strategic objectives.<br>We submit the clause should be rewritten to state "how the entity intends to give effect to the statement of strategic and performance expectations.<br>With respect to clause 145(2)(b), the term 'significant work" needs to be defined. It is unclear whether it is significant in monetary terms or in legal terms.<br>The statement of intent should also include reference to standardised performance targets.<br>The Council submits that clause 145(3)(b) should be deleted. If the entity is carrying out appropriate monitoring and all quarterly monitoring reports are published then the information in this paragraph should be well known. The Council also notes that a Statement of Intent is due by 30 June but financial statements are not required for another 3 months. On this basis it would not be appropriate to publish accounts that are not audited nor adopted by the board. Furthermore, the LGA 2002 does not require this of council controlled organisations.<br>These suggested amendments would read as follows (if the Select Committee decides to retain the clause in the main body of the Bill):<br>***145. Content of statement of intent***<br>*Strategic elements*<br>*(1) A statement of intent for a water services entity must, for the period to which it relates, set out—*<br>*(a) how the entity intends to meet its objectives, perform or exercise its duties, functions, and powers, and comply with its operating principles; and*<br>*(b) the outcomes the board expects to achieve through the delivery of water services; and*<br>*(c) how the entity intends to give effect to—*<br>*(i) ~~the expectations, strategic priorities, and outcomes outlined in the statement of strategic and performance expectations for the entity~~ **the statement of strategic and performance expectations;** and*<br>*(ii) the direction and priorities in the Government policy statement.*<br>*Operational elements* |

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| | | *(2) A statement of intent for a water services entity must, for the period to which it relates, set out—*<br>*(a) the nature and scope of the activities the entity proposes to undertake; and*<br>*(b) significant work that the entity proposes to undertake; and*<br>*(c) any actions the entity intends to take (consistent with its plan under section 141(2)) relating to water services as part of its response to a Te Mana o te Wai statement for water services; and*<br>*(d) how the entity proposes to approach consumer and community engagement; and*<br>*(e) a forecast statement of service delivery performance for water supply, wastewater, and stormwater services, including non-financial performance measures and targets about the quality of the services to be delivered.*<br>*Financial elements*<br>*(3) A statement of intent must also include—*<br>*(a) the forecast financial statements for each financial year in the period to which the statement of intent relates; and*<br>~~*(b) the financial statements for the financial year immediately preceding the period to which the statement of intent relates; and*~~<br>*(c) a forecast of expenditure to be applied to—*<br>*(i) meet additional demand for water supply, wastewater, and stormwater services; and*<br>*(ii) improve the level of the service delivery performance; and*<br>*(iii) replace existing assets.*<br>*(4) For the purposes of this section, budgeted expenditure applied for 2 or all of the purposes in subsection (3) may be treated as if it were applied solely in relation to the primary purpose of the expenditure.*<br>*(5) In this section, **significant work** means …* |
| **146** | **Board must public statement of intent** | This clause requires that the board of the entity must as soon as practicable after providing a statement of intent to the entity's RRG, make the statement publicly available. The Council submits that it would be appropriate to align this requirement with the LGA 2002 which sets a time limit of one month.<br>***146. Board must publish statement of intent***<br>*The board of a water services entity must, ~~as soon as practicable after providing a statement of intent to the entity's regional representative group,~~ **within 1 month of adopting the statement of intent**, make the statement publicly available by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible.* |
| **147** | **Board must prepare asset management plan** | Under this clause, the board of a WSE must provide an asset management plan to the entity's RRG at least once in every 3-year period. However, it is not clear when the first asset management plan is to be prepared or whether the logistics of how such a plan will be prepared in the first instance have been considered. An asset management plan covering the assets of multiple local authorities will be an enormous document and it will be an enormous task to bring it all together. The Council submits that transitional provisions are required in relation to the formulation of the first asset management plan. |

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| 148 | **Content of asset management plan** | This clause sets out the content of the asset management plan but is very light on details. The Council submits that there should at least be a requirement for a description of the assets. |
| 151 | **Content of funding and pricing plan** | This clause sets out the content of a funding and pricing plan. However, the Council notes that there is no requirement to consider the affordability of the entity's pricing of its water services. Surely this should be a fundamental consideration of the WSE. |
| 153 | **Board must prepare and adopt infrastructure strategy** | The Council makes the same comments, with the necessary modifications, as in relation to clause 147. |
| 154 | **Content of infrastructure strategy** | This clause sets out the requirements for the infrastructure strategy. However, when comparing this clause with section 101B(4) of the LGA 2002, the Council notes that it is weak in relation to forecasting assumptions. The Council submits that forecasting assumptions are included in this clause. |
| 156 | **Obligation to prepare and publish annual report** | The Council submits that the time for preparing and publishing an annual report should be 3 months as is the case with council controlled organisations – see section 67 of the LGA 2002, and that the a copy of the annual report should also be provided to the territorial authority owners. The Council submits that subclause (1) should be redrafted as follows:<br>***(1) Within 3 months after the end of each financial year, the board of a water service entity must—***<br>***(a) complete a report on the entity's affairs during that year; and***<br>***(b) deliver the report to regional representative group and to the territorial authority owners; and***<br>***(c) make the report available to the public.*** |
| 174 | **Meaning of problem for purposes of subpart** | Clause 174 defines problem, for the purposes of the Minister's powers to intervene, as a matter, circumstance, or failure that has actual or probable adverse consequences for consumers or communities in a WSE's service area. A problem includes "a significant or persistent failure by the entity to perform 1 or more of its functions or duties under the Bill or to give effect to a Government policy statement." The Council considers that this should also refer to the statement of strategic and performance expectations.<br>The definition also refers to a potential problem – but there is no guidance as to when a matter becomes a potential problem. This should be clarified. |
| 185 | **Notice of proposed appointment of ministerial body** | The Council submits that the clause is amended to provide that the territorial authority owners are notified when the Minister is proposing to appoint a ministerial body. |
| 186 | **Notice of appointment of ministerial body** | The Council submits that the clause is amended to provide that the territorial authority owners are notified when the Minister has appointed a ministerial body. |
| 188 | **Final report of ministerial body** | The Council submits that clause 188(2) is amended to provide that the Minister gives a copy of the report to the territorial authority owners. |

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| 202 | **Engagement requirements** | The Council supports the engagement principles set out in this clause however the focus of the engagement is directed at "consumers and communities". Overall there is little in the Bill about WSEs consulting with or advising territorial authorities (as we have previously commented on). And we have drawn noted this throughout this submission. |
| 203 | **Consumer forum** | The Council notes the requirement to establish the consumer forum. However, it is not clear how the WSEs are to act on/have regard to/acknowledge any consumer/community engagement resulting from this forum. This should be clarified unless the proposal is to link the clause to clause 204. |
| 204 | **Consumer engagement stocktake** | This clause provides that the chief executive of a WSE must prepare a consumer engagement stocktake annually. The Council submits that the wording of the clause could be improved. The chief executive prepares the document but this should be provided to the board of the entity, and provided to the RRG. |
| 206 | **Regulations** | This clause sets out the regulation making powers.<br>Notably there is a regulation-making power to provide for transitional and savings provisions concerning the coming into force of the Act that may be in addition to, or in place of, the transitional and savings provisions in Schedule 1, including transitional reporting obligations to apply to local government organisations or WSEs. This allows the Government to change Schedule 1 without a statutory amendment. This seems highly unusual and usurping the power of Parliament. The Council submits that this regulation-making power is deleted.<br>The clause must also be changed to provide the suggested amendments to clause 94 as detailed above (first constitution).<br>The Council submits the clause should be redrafted as follows:<br>***"206. Regulations***<br>*(1) The Governor-General may, by Order in Council on the recommendation of the Minister, make regulations for all or any of the following purposes:*<br>*(a) providing for ~~a~~ **one or more** model constitution**s** for the purposes of section 94:*<br>*…*<br>*~~(c) providing for transitional and savings provisions concerning the coming into force of this Act that may be in addition to, or in place of, the transitional and savings provisions in Schedule 1, including transitional reporting obligations to apply to local government organisations or water services entities:~~*<br>*…*<br>*(2) The Minister must, before recommending the making of regulations under subsection (1)(a) in relation to a water services entity, ~~engage~~ **consult** with the territorial authority owners of the entity and mana whenua of the service area.*<br>*…"* |
| 214 | **New section 159A inserted and repealed (Review of water services bylaws may** | The Bill briefly mentions bylaws, with this clause enabling the review of water services bylaws to be deferred if the review is due during the transition period. We have several concerns in relation to water services bylaws.<br>The first is that it is not clear if trade waste bylaws are considered water services bylaws. The Bill defines water services bylaws as water supply, |

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| | **be deferred during transition period)** | wastewater and stormwater bylaws, and does not mention trade waste bylaws. There is a specific bylaw-making power that enables councils to make bylaws to regulate trade waste in the LGA 2002 (section 146(1)(a)(iii)) and many councils have standalone trade waste bylaws. A portion of trade waste (commercial and industrial liquid waste) discharges into the wastewater system. Clarity is needed as to whether trade waste bylaws are included in the deferral opportunity provided in the Bill.<br>The second relates to inconsistent terminology. The Water Services Act 2021 enables Taumata Arowai to set environmental standards for wastewater, and uses trade waste as an example (see section 138(1)(d) of that Act). The Water Services Act also amended the LGA 2002 to require any bylaws regulating a wastewater network to give effect to such standards (see section 211 of that Act). The terminology in the Water Services Act and this Bill in relation to trade waste and wastewater bylaws needs to be aligned.<br>We also highlighted other more general concerns in relation to bylaws in the first part of this submission. |
| **Sch 1 Cl1** | **Interpretation** | The definition of '**infrastructure assets**' - we note that the definition begins with the word "includes" and is followed by a list of described inclusions in subclauses (a) and (b). An "infrastructure asset" could be anything listed in subclauses (a) and (b), but it could be other things as well. For example, there is nothing in the proposed definition to explain what infrastructure might be excluded, or what assets might excluded. Thus, an "infrastructure asset" could include, for example, a road, a power line, instruments and contracts providing rights for such infrastructure.<br>Furthermore, proposed clause (b) of the definition effectively provides a WSE with a discretion to define what an infrastructure asset is by including whatever "asset" it wishes in "the strategy" (which presumably is a reference to the infrastructure strategy mentioned in section 134 of the Bill, but this is not made clear). As the plain ordinary meaning of an "asset" can be so broad so as to include any property, thing or person of value, an asset could conceivably include (for example) services contracts, accounts receivables, cash held, vehicles, intellectual property or, conceivably, an entire local government organisation that is involved in providing water related services.<br>We submit that the definition of infrastructure assets should be amended to provide clarity on the practical implementation of this section. Please see our supplementary submission for further information. |
| **Sch 1 Cl 7** | **Chief executive of department may approve establishment water services plan** | The chief executive of the DIA may prepare and approve an establishment water services plan for a WSE. This requires consultation with the relevant WSE.<br>The Council submits that the chief executive should also consult with territorial authorities before this plan is finalised. |
| **Sch 1 Cl 14** | **Relationship of this Part with Local Government Act 2002** | This clause provides certain exemptions from complying with various provisions of the LGA 2002. However, the Council submits that this provision must include exemptions for other provisions of Part 6 of the LGA 2002 (general decision-making). |
| **Sch 1 cl 16** | **Obligation to offer certain employees position that involves same or similar duties and responsibilities** | Under this clause it is the responsibility of the chief executive of the water service entity to offer employment provisions to territorial authority staff. However, the Council notes that generally there is not a clause which provides that the chief executive of a WSE has the authority to employ staff. (In other words there is no provision comparative to 42(2)(g) of the LGA2002. Nor is there a provision that sets out the role of the chief executive of a water service entity. It would be desirable for this to be remedied, otherwise, the entity itself will be responsible for employing all employees (not just the chief executive). |

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| **Sch 1 Cl21** | **Decisions subject to department's oversight powers** | This clause defines what decisions are subject to oversight by the DIA in relation to the provision of water services; or that may affect the provision of water services. There are outdated references to long-term council community plans. |
| **Sch 1 Cl 26** | **Crown expenses and capital expenditure recoverable from water services entity** | This provides that WSEs will pay the Crown's costs in relation to establishing a WSE. This clause was not in the Exposure Draft of the Bill, and there is no explanation as to why this clause has been included now - at the end of Schedule 1. The Council is very concerned about the possible extent of this clause and the ramifications for the WSEs.<br>This clause reflects (to some extent) section 23 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009. However, the clause goes beyond what was included in that Act. There section 23 provided that<br>***23. Crown expenses and capital expenditure recoverable from Transition Agency***<br>*Any expenses or capital expenditure that the Crown incurs in relation to establishing the Transition Agency, or for the purposes of the Transition Agency, constitute a debt due by the Transition Agency to the Crown on the terms and conditions agreed between the Minister, the Minister of Finance, and the Transition Agency.*<br>We note that the debt of the Transition Agency was transferred to Auckland Council when the Transition Agency was wound up (see section 27 of that Act). However, in that case, the Act did not refer to expenses or capital expenditure being incurred before the commencement of the clause (as is the case here). Furthermore, there was not the issue of the Better Off funding package and the concerns that this could be likely captured by this clause.<br>The Council is of the view that the costs for this reform sit squarely with the Government. The Council submits that this is an untenable situation and the clause should be deleted. |
| **Sch 3 Cl 1** | **Draft statement of intent** | The Council submits that the Bill needs to clarify whether or not WSEs may establish subsidiaries, and the position in relation to statements of intent.<br>By way of comparison, the LGA 2002 provides for indirect ownership - if a council controlled organisation has a subsidiary the shareholder must receive a statement of intent and reporting as it is indirectly an owner. |
| **Sch 3 Cl 2** | **Strategic elements must be approved by regional representative group** | The Council acknowledges that the Bill provides that the RRG essentially decides the strategic aspects of the statement of intent and the board decides on the operational and financial elements – refer clause 145 of the Bill and clauses 2 and 3 of the Schedule 3. Furthermore, the Council acknowledges that the tenor of its submission is that there is a need for more involvement of the territorial authority owners. However, the Council submits that the current regime in relation to statements of intent presents a very odd proposition for WSEs when good governance principles are considered. Applying the current provisions, the Council submits that<br>• It is not good governance practice to make the board of an entity accountable for outcomes that are unilaterally made by others (i.e. those matters in clause 2 which are decided by the RRG); and<br>• Efficiency is at risk if the RRG is not well enough informed of the consequences of its impositions under clause 2; and<br>• It is expected that the entity itself will have superior "on the ground" information in the same way it's expected of all companies (which is partly why the LGA 2002 provides for a process of integrity).<br>Consequently, the Council submits that clause 2 should be deleted and replaced with a clause that follows a similar process in Schedule 8 of |

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| | | the LGA 2002. |
| **Sch 3 Cl 3** | **Board must also consider group's comments on operational and financial elements** | The Council submits that this clause also needs to be reconsidered. The statement of intent is a document owned by the board of the entity and is its strategic, governance and accountability document. Operational matters are between the RRG and the chief executive of the entity and between the chief executive and his/her employees. |
| **Sch 3 Cl 5** | **Regional representative group may extend deadlines by up to 1 month** | The Council submits that this clause is ambiguous as it is in the LGA 2002, and should be clarified. It can be read as one month for each date or one month in total across all three. The Council submits that this should be one month for each date as the alternative does not work. |
| **Sch 4 Cl 3** | **Regional representative group may, after consultation, resolve by 75% majority to refer proposal to territorial authority owners** | The Council submits that there is a drafting error in clause 3(2) where it refers to a poll. This is a mistake and should refer to a 75% vote on whether to forward to the territorial authority owners. |
| **Sch 4 Cl 4** | **Territorial authority owners may resolve unanimously to refer proposal to poll** | The Council has drafting concerns with this clause. What is meant by subclause (2) which states that "*The resolution fails unless supported by a unanimous vote of all the territorial authority owners (instead of only all those present and voting)*?" When is the vote taken, and what does unanimous vote mean? Is it all members of each territorial authority or all territorial authorities? |
| **Sch 4 Cl 5** | **Notification of divestment proposal** | The Council queries why subclause (2) refers to 'affected water service entities'? Does this clause envisage only 1 entity or does this clause envisage the amalgamation of entities? |

**Attachment B** Examples of Integrated Stormwater Assets