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Committee Secretariat
Finance and Expenditure Committee
Parliament Buildings
Wellington

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Kāpiti Coast District Council Submission on the Water Services Legislation Bill and the Water Services Economic Efficiency and Consumer Protection Bill.

1. Thank you for the opportunity to submit on the two water bills currently before the Select Committee. As noted in our previous submission on the Water Services Entities Bill, Kāpiti Coast District Council acknowledges that how we deliver water services across New Zealand needs to change and is supportive of the need for reform. However, we still have concerns about the way these reforms are being implemented through the legislation before us.
2. While many of our initial concerns outlined in our previous submission remain, Kāpiti Coast District Council acknowledges the passing of the Water Services Entities Act in December 2022. However, the Government recently announced intentions to make changes to the Water Services approach, which will be announced after the date of this submission. On that basis, we ask that the issues raised in our previous submission are reconsidered.
3. This submission will focus on the more detailed provisions found in the two pieces of legislation currently before the Committee.
4. Council would like to note that the time to provide a meaningful submission in this process has been short due to the cross-over with the holiday period. Council also feels there is additional resource pressure while the Resource Management Act reforms are underway simultaneously.
5. Council supports the broad principles outlined in the Te Ātiawa ki Whakarongotai submission, and are as follows, in their words:
 - a. *"Our existing partnership arrangements relevant to three waters are protected and transferred to the new entity."*
 - b. *"We are able to maintain our Tino Rangatiratanga over water."*
 - c. *"Existing funding arrangements are protected and transferred to the new entity."*
6. We refer you to their submission for further information.

Structure of our submission

7. Our submission is structured as follows:

- a. Kāpiti Coast District - Our context
- b. Key recommendations and high-level comments about the reforms.
- c. Specific comments on the Water Services Legislation Bill
- d. Specific comments on the Water Services Economic Efficiency and Consumer Protection Bill.

Kāpiti Coast District – Our context

8. The Kāpiti Coast has been recognised for its strategic approach to water over many years and continues to deliver quality three water (drinking water, wastewater, and stormwater) outcomes.
9. Our approach to demand management and long-term sustainable provision of potable water has been acknowledged by the Office of the Auditor General. We've focused on spending money on our core infrastructure and putting in place the many elements that contribute to managing our water efficiently, such as water meters, a river recharge system, grey water tanks, and upgrades to our water treatment plants. We're currently advancing significant projects in both wastewater and stormwater to deliver improved environmental outcomes.
10. While we support the need for change, we have real concerns about the planned approach to Three Waters Reform, which we see as one-size-fits-all, overly complex and difficult to implement. We're also concerned about funding, affordability, governance, and ownership aspects of the proposed model.

Key recommendations

11. Council feels that water is a fundamental human right and the service provision of this needs to be resourced appropriately. A reduced service level offering is not an option for our communities under this new service delivery.
12. Should current plans proceed, Council is concerned with the current transition plan from 1 July 2024. It is unclear what resources and leadership will still be required from Council during the handover post 1 July 2024, and who will fund this. We wish to raise concern that Council will not be able to rate against the water assets, and will therefore not have ability to fund. This makes it difficult to plan for staffing, resourcing, funding, and communication with our communities.
13. As future plans for implementation unfold, the Council and water service entity (WSE), or similar, relationship will be a critical one. It needs to be set up in a way that will enable (rather than compromise) the ongoing role and functions of councils particularly in an emergency management context. Further detail is required around how this relationship will function.
14. Water Services Legislation Bill - we are concerned about the provisions relating to council potentially collecting water charges on behalf of WSEs. Council opposes being compelled to collect revenue for a service they will no longer control and deliver, partly because of the potential public confusion this will generate about who is accountable. Further detail is required around how this collection of charges will function and how reputational risk will be managed for councils.
15. Water Services Economic Efficiency and Consumer Protection Bill – this Bill seems to view the water services sector as similar to existing monopolised utility industries. In particular, the Bill aims to limit WSEs' ability to extract excessive profits. We think this language is unnecessary given the proposed public ownership model. This language should be reviewed.
16. Alignment with the wider reform programme – we are concerned that there is minimal

alignment in the role of local versus central (or regional) government - including WSEs – through the wider reform programme being pursued by Government, including resource management reform and the Future for Local Government review. For example, the relationship between WSEs and the regional planning committees established under the Natural and Built Environment Act is unclear; and the role WSEs will play in Regional Spatial Strategies and Natural and Built Environment Plans is not stated.

17. Overall, we are concerned with how these reforms will impact on the ability of local government to appropriately undertake some of its other statutory functions, including emergency management and spatial planning. For example, councils spatial planning may consider a development in one area while the timing, or provision, of three waters asset service does not align with this.

Detailed feedback

18. Specific feedback is set out for each Bill below.

Water Services Legislation Bill

General Relationship between councils and Water Service Entities

19. The council and WSE relationship will be a critical one for both parties. It needs to be set up in a way that will enable (rather than compromise) the ongoing role and functions of councils.
20. The Water Services Legislation (WSL) Bill tends to treat council as just another stakeholder group for a WSE to engage with, while implying that the WSE acts as an independent self-sufficient organisation. This 'us and them' approach has the potential to be at the expense of a more joined up focus on local communities' needs.
21. The legislation needs to reflect that WSEs will operate within a broader system that services communities, with council remaining central to that overall picture as well as being democratically accountable. Communities should expect both service organisations to work hand in glove for their benefit. However, it needs to be clear that council will not be the front face of this service from 1 July 2024. While the WSL Bill signals the need and opportunity for operational/planning integration and partnering, it does little to direct or mandate it.
22. Existing relationships, experience and capabilities of council will need to be respected and leveraged if the overall system is to operate well at a local level. Expectations on council, particularly during the transition and establishment phase, need to be carefully managed and consider the fact that council will lose their three waters capability, capacity, and also ability to raise income for this area of service provision from 1 July 2024.

Functions of Water Services Entities

23. We support the specific requirement to 'partner and engage' with council.
24. The establishment of the new entities is out of context with the system it will sit within, or alongside. It is unclear what 'partner and engage' with council will actually mean in practice, including how it will connect with councils' placemaking and community wellbeing functions. No expectations are set, and no guidance is provided.
25. The obligation to 'partner and engage' should not amount to an expectation that council will be involved in three waters service delivery if the reform proceeds as proposed, and councils lose control of three waters assets.

Absent alignment of 'purpose' between councils and WSEs

26. We are concerned that the lack of shared 'purpose' between council and WSEs will create tension. Under the Local Government Act 2002 (LGA), council is required to promote the social, economic, environmental and cultural wellbeing of communities both now and in the future. WSEs do not share this purpose. This lack of clear alignment could create tension and favour the 'plan implementer' (WSEs) over the 'plan maker' (council). This could result in some communities been worse off, rather than better off.
27. We think the WSL Bill should expressly recognise that the council's ability to influence three waters services is limited to the tools available under the new legislation. Council should not be accountable or responsible for three waters outcomes or other outcomes that depend on WSE decisions, which may not align (in substance or timing) with a council's broader planning frameworks.
28. What happens if a council ends up in conflict with a WSE because the council's view of 'community needs' is at odds with what the WSE can justify or afford from a (wider service area) financial sustainability perspective? This needs to be clarified.
29. What happens if a WSE limits or stops the provision of services to an area because it assesses that climate change or natural hazard risks mean a higher level of investment is uneconomic? This could be the case if the cost of repair exceeds available financial resources when weighed against competing priorities. Also, what happens if the WSE's actions don't align with a council's broader plans to build resilience to or respond to climate change/natural hazard risks in a certain area? This needs to be clarified. For example, Governments growth goals could be deprioritized or put at risk if infrastructure planning does not support local level implementation activity or goals.
30. A WSE must pursue statutory objectives focused on efficiency, financial sustainability, and best commercial practice. There is potential for misalignment between these drivers and councils' broader focus that encompasses placemaking and community wellbeing. But in resolving this tension, council will potentially be limited to escalating issues to the RRG and providing input on relevant planning/policy documents (unless resolution is included in a 'relationship agreement' – see discussion below).

Political Accountability

31. Council (and elected members) will attract a level of political responsibility for the three waters system and will remain obligated to look out for community interests. Our communities will assume council still has sway and a voice when this is not the case.
32. We think the LGA should expressly recognise that a council's ability to achieve some aspects of its 'purpose' may be heavily dependent on WSE decisions – over which it has limited or no control. As such, the duties of a council should expressly reflect those limits.
33. Given an element of political accountability is inescapable, we think the model should be changed in one or more of the following ways:
 - a. Decision-making rights within the governance model need to be recalibrated. Council needs to be given a louder voice that WSEs must listen to on key topics (for example, around place-making and 'master planning'). This would mean a council can set some of the operating parameters that a WSE must respond to, consistent with its duties and objectives);
 - b. Clarifying the process for balancing central versus local needs to be

transparent (e.g. objection process). Subject to a suitable threshold, councils need to be expressly empowered to challenge (and seek reconsideration) of WSE decisions that the council reasonably considers will negatively impact the delivery of a key element of an approved Long-Term Plan. (As Resource Management Reform beds in, this would extend to an approved regional spatial strategy.)

Relationship Agreements

34. We think agreements with individual councils (as opposed to agreements with multiple councils) are the best way to ensure individual council needs are met. However, we think some elements of these relationship agreements should be 'standard form'. This would ensure that all councils/WSEs benefit from a best-practice approach to matters they all share in common. It would also help develop consistency and reduce the need to 'learn' and apply bespoke arrangements.
35. It is unclear what status a relationship agreement will have, and what binding effect it will have. If such an agreement will not be legally enforceable, then the Bill should do more to frame up the context of the special role and nature of the relationship agreement between a WSE and a council. This could mean, for example, an express expectation of joint care and stewardship for all the systems impacted by their respective actions for the benefit of local communities. It could mean finding synergies that leverage and enable each organisation to succeed and avoid duplication of resource and cost.
36. Relationship agreements should be used to provide for the interface between three waters and council planning systems. In time, relationship agreements should be established with the regional planning committees that will be established through RM reforms.

Charging provisions – collecting charges

Councils collecting charges:

37. Council oppose being compelled to collect revenue for a service they will no longer control and deliver, partly because of the potential public confusion this will generate about who is accountable. This set-up creates a reputational risk for council as our community will still think that council is delivering water services if the billing is received
38. The Bill says that a WSE will be able to insist that a council collects charges on its behalf (in exchange for a 'reasonable payment for providing the service') until 1 July 2029. To facilitate this, a WSE will enter into a 'charges collection agreement' with the council. But if a charging agreement is not agreed upon, the Minister has power to impose terms. This provides a high level of risk for council to manage.
39. We feel that councils should not be responsible for collecting charges, if it is not practical for WSEs to stand up their own billing/collection systems on 1 July 2024.
40. In our view, any interim arrangement should be supported by agreed principles and limits to protect councils' interests. The WSE will need to appropriately compensate council for this role and also carry the risk of council resources and systems not being able to do what the WSE might want.

Geographic averaging:

41. According to the Bill, a WSE board may charge geographically averaged water prices for different service types and consumer groups (clause 334).
42. The Bill does not direct how, when or where geographically averaged prices should be applied by the WSEs. Instead, it leaves this up to a WSE board, which will need to

act consistently with the general charging principles (clause 331), including Commerce Commission input methodologies and determinations (which will not be in place on 1 July 2024).

43. The transitional provisions contemplate a WSE carrying forward existing tariff or charging structures until (as late as) 30 June 2027.
44. A core pricing principle (which, if not brought forward by regulations, will apply from 1 July 2027) is that charges should 'reflect the costs of service provision'. Given the way the principle has been expressed, and then qualified, it suggests a starting point of standardised user pricing by reference to the WSE's total cost base. The Bill says that charging a group of consumers differently may only occur if the group receives a different level (or type) of service, or the cost of providing the service to that group is different. But even then, a WSE board may decide not to apply a 'costs should lie where they fall' approach (including in order to remedy prior inequities in the provision of services), or the WSE CE may discount charges that would otherwise apply.
45. Council is concerned that geographic averaging of water services charges may create new inequities. For example, should residential consumers in a metropolitan area (who benefit from the cost efficiencies that come from operating at scale in a defined location) share in the (naturally) higher costs involved in delivering a similar level of service to a rural and provincial residential consumers? This issue becomes even more complex where there are strongly held views about the level and quality of previous investment in the water services assets.

Water infrastructure contribution charges:

46. WSEs will have the power to set water infrastructure contribution charges. These can be used if new development or increased commercial demand mean the WSE must provide additional or new water services assets.
47. Under clause 348, the Crown is exempt from paying water infrastructure contribution charges. This is a concern, as Crown agencies are often major developers and can exacerbate issues that are the responsibility of the WSE (or local council). Such an exemption should be something that the Crown applies for and needs to justify. This application should reference the benefits derived for a particular community from such a Crown project – and those benefits need to be sufficient to justify the associated water services-related costs that will be borne by all consumers across the WSE service area.

Combined cost to ratepayers

48. The reform assumes that, all other things being equal, the combined costs of water bills and rates bills should not change when the water services entities stand up. We have some concerns with this view. Although this outcome may be forced in the short term, there will be a point of material adjustment down the track, for the reasons discussed below.
49. To date, councils have taken a long-term, portfolio view of their finances and activities. Taking this approach means there may be current levels of under-rating or cross-subsidising. Without three waters services, councils may need to increase their general rates to cover the real costs associated with their remaining functions.
50. It is unclear whether DIA has a plan to address situations where council rates do not drop by an amount equal to what the WSE is charging for water services. This needs to be addressed.

Rating WSE assets

51. WSEs will not pay rates on pipes through land they do not own, nor on assets located on land they do not own. However, other utilities (such as electricity line companies and telecommunications companies) contribute their share of rates related to land and assets they benefit from.
52. Whether WSEs should be approached in the same way as other utilities depends on the nature of the relationship between councils and their WSE. A partnering relationship of an overall system for the benefit of local communities is quite a different scenario from the relationship that exists between councils and existing utility providers.
53. If councils are expected to be active collaborators with their WSE in performing their respective roles in the most cost- and process- efficient way, then councils must be funded to do that. Collecting a share of rates from WSEs is one way of creating a revenue source to fund that. Alternatively, councils will require some other source of funding.

Stormwater

54. There is significant complexity associated with urban stormwater networks transferring to the WSE but not the 'transport stormwater system' or those aspects which are mixed use. This might not work or be efficient to operate in practice and it is likely council will incur additional stormwater costs linked with its transport network.

Management plans:

55. WSEs will be required to produce 'stormwater management plans'. When producing these plans, the WSE must engage with councils. According to the Bill, councils must work with the WSE to develop the plan. But clarification is needed around how WSEs and councils will work together to develop and implement these plans and how council will be resourced to provide this engagement.
56. The operational interface and touchpoints will be many and varied. These need to be carefully managed as each council and its WSE find their feet and set up channels of communication and processes to support their ongoing engagement and legal compliance obligations.

Interface with councils' roles and functions

Carrying out works:

57. WSEs will have the power to construct or place water infrastructure on or under land owned by councils. The WSE only needs to provide 15 days' notice where it intends to carry out work. We question how this will work cohesively with council processes, and whether the 15-day notice period is sufficient warning for councils. Further to this, it may accrue additional costs for rate payers if more work is required on roading and other delivery of council services.

Sharing rating information:

58. The Act will require local authorities to share rating information kept and maintained under the Local Government (Rating) Act 2002.
59. Not only do councils need to be compensated for the work required to share this information:
 - a. they need to be insulated from any risk associated with complying with a WSE request (cl 319(2)) that is beyond what the WSE is entitled to ask for; and
 - b. their obligation needs to be subject to what their existing systems are capable

of producing (with the resources councils have available, recognising that this will not be their core business nor a priority in terms of the performance of their continuing functions).

Councils' three waters debt

60. We are concerned about the process for determining councils' three waters debts. The Bill says the assessment of the total debt amount will be made by the DIA Chief Executive. There is no recourse to the Minister if there is a disagreement on the amount. The council only gets a chance to agree date and manner of payment, not amount. We believe this needs to be viewed in conjunction with the 'no worse off' commitments made by Ministers under the Heads of Agreement between the Crown and LGNZ (these are referenced in cl26A of sched 1 Part 1, subpart 6 of WSE Act).
61. The Bill anticipates scenarios where councils may keep holding (some portion of) this debt for a period of up to five years. This may be to accommodate instalment payments over time to match the existing debt repayment profile. But more detail is required from DIA about what is actually contemplated here.

Legal claims and liability

62. We have concerns around who will 'wear the liability' when things go wrong, and what legal remedies will (and should) be available. For example:
- a. What happens if water controlled by a WSE damages council assets?
 - b. What will the consequences be if a council or WSE fails to act consistently with the terms of their relationship agreement? Should the non-defaulting party be granted statutory relief if this situation results in them failing to comply with a requirement?
 - c. Will councils or landowners be able to bring judicial review proceedings against WSE decisions on policies/plans that adversely impact the value of their property or other aspects of their economic interests?
 - d. Will councils continue to be liable for past breaches and failures relating to water infrastructure, which they may not now be able to fund?
63. These matters need to be clarified.

General comments

64. Most of the detail around asset/contract transfers, and establishing the WSEs, has been adopted from previous statutory reorganisations. Generally, we think councils would benefit from:
- a. Receiving some assurance from the Government that the lessons learned from those earlier reorganisations have been reflected in this legislation (i.e. that a 'best of breed' approach to reorganisation is being taken); and
 - b. Being provided with a guide to the legislation that clearly identifies the points of difference from current LGA positions (to assist councils with understanding and planning for the change management involved with implementing the reforms).
65. We think it would be beneficial to clearly map out the LGA content pre- and post-impact of this Bill, taken together with the WSE Act 2022 (this should include what stays, goes, changes and where there is a clear need to manage an interface between council and water services entities' powers).
66. Any engagement taking place between councils and DIA/NTU before 1 July 2024 will count as engagement or consultation for the purposes of the legislation. This should

be qualified by the need for DIA/NTU to clearly identify and communicate when particular contact and content counts and for what particular purpose. This cannot be asserted after the event. Councils need to know when to bring their issues/concerns to the table with DIA/NTU.

Other points

67. We think any council land transferred to a WSE that becomes 'surplus' should be returned to the original council owner, so it can be made available for alternative community use or sale, and the proceeds made available for use in the particular local community. It should not be retained nor sold by the WSE for its own purposes or benefit.
68. The Bill says that if a council needs to move three waters assets to carry out other functions, it has to pay. The same applies to the WSEs in reverse. We think WSEs and councils should collaborate to reduce costs where either party has to undertake activities that interfere with the other's assets.
69. Currently, councils can create efficiencies, as they own both sets of assets. We want to ensure these cost savings are not lost by a separation of functions.

Water Services Economic Efficiency and Consumer Protection Bill

Problem Definition

70. The Bill seems to view the water services sector as similar to existing monopolised utility industries. In particular, the Bill aims to limit WSEs' ability to extract excessive profits. We think this language is unnecessary given the proposed public ownership model.

Quality regulation

71. Introducing quality regulation in the first regulatory period may be an unrealistic target.
72. Quality regulation applies to other utilities. However, quality regulation requires:
 - a. A clear (and quantified) long-run view of current quality performance across the whole asset base (i.e. a baseline);
 - b. Information on the level of service quality consumers support, and are prepared to pay for; and
 - c. An understanding of what level of quality performance is realistically achievable in the future, on what timeframe and at what cost.
73. Other sectors (e.g. electricity or telecommunications) implemented their quality regulations with an existing historic data set of network performance, which provided a clear baseline and supported a forecast of achievable future performance. Outside of the main metros, we doubt this would be the case for three waters.

Price-quality regulation

74. Price-quality regulation is an extremely costly and complex form of regulation. It may not be realistic to roll out price-quality regulation just three years into the new regime.
75. Price-quality regulation aims to address excessive profits and increase efficiency. As outlined above, excessive profit taking is not an issue in the three waters sector. Efficiency would be addressed through the information disclosure regulation. We think the information disclosure component should be given a chance to do its work, before we move to a more complex, onerous, and costly form of regulation.

76. Similar to quality regulation, price-quality regulation is more effective with better data. If price-quality regulation becomes necessary down the track, the regulator would be better placed to implement it with two or more regulatory periods of data.

Thank you again for the opportunity to provide comment on the proposed reform programme. We request the opportunity to speak to our submission before Select Committee.

Yours sincerely



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