

## Upper Hutt City Council's submission regarding the proposed Water Services Legislation Bill

On behalf of Upper Hutt City Council (UHCC), please see our submission regarding the proposed Water Services Legislation Bill.

We would like to speak to our submission.

### Who we are

Upper Hutt City Council is responsible for the largest geographical district in the Greater Wellington region. The district provides a significant proportion of the fresh water that supplies the region, both as a catchment area and source, and much of the water storage, treatment and distribution infrastructure.

Te Awa Kairangi (the Hutt River) and its tributaries catch and transport the largest single volume of stormwater in the Wellington region, and provide recreation for many residents and visitors to the region.

Our Sustainability Strategy 2020 includes the goal to 'have good quality and sufficient water supply'.

### Introduction

This submission focuses on four aspects of the Bill that are of particular concern to the Council, namely:

- The provisions for 'pass-through billing', which oblige the Council to collect funds from ratepayers for services over which the Council will no longer have control or accountability without sufficient certainty that Council will be able to fully recover its costs;
- The risk that WSEs will not deliver the three waters infrastructure needed to enable planned-for growth, ie the lack of alignment between development activities planned for and approved by local authorities, on the one hand, and infrastructure delivered by WSEs, on the other; and
- The provisions relating to stormwater, which treat territorial authorities unfairly (and are unclear), and
- The overall complexity and uncertainty of dynamics between Council and WSE functions

### Submission comments

1. UHCC accepts that there is a need to explore other, better ways to deliver the three water services, but fundamentally does not believe that the one solution being offered is suitable. We firmly believe that there are other ways of achieving the objectives of the three waters reform programme. These should have been, and still need to be, explored and discussed further.

2. We do not believe that the proposed timeframe to introduce these changes is realistic or achievable without causing irrevocable damage to the wellbeing of our communities as we have expanded upon further in our submission particularly in the Growth and investment section.
3. UHCC agrees that more investment is needed in water infrastructure, but this has to be done in a manner that is fit for purpose, includes genuine local ownership, enables good governance and most importantly ensures that the needs of local communities are met, and their voice is heard.
4. We remain concerned that the magnitude and number of reforms is stretching the capability and capacity of both central and local government. There is a real risk that this might lead to rushed, compartmentalised decision-making, without comprehensive consideration of the consequences for councils and the varied communities we serve.
5. The sequencing of reforms is a key concern to us, and UHCC strongly advocates that the Future of Local Government Reform should be completed first, as only then can we fully understand the context that the Three Water Reforms will be nested in.
6. The timeline for standing-up the new entities to be operational by 1 July 2024 is unrealistic, given the scope and magnitude of the programme, and UHCC believes it should therefore be delayed by at least 12 months.
7. We submit that our concern regarding sequencing and timing of the reform is supported by the lessons learnt from reforms in Australia as was explored through the Local Government New Zealand investigative work on alternatives undertaken in the early stages of the reform.
8. UHCC has a number of concerns which need to be addressed and we strongly urge that the Bill is not progressed until these are resolved in consultation with local government.

#### **PASS-THROUGH BILLING**

9. The provision for 'pass-through billing' is highly problematic for the Council (and local authorities more generally) in numerous respects, including the following:
  - a. Once the Bill becomes law, the Council will no longer have any governance or decision-making abilities, or delivery responsibilities, in respect of three waters infrastructure and services, because the relevant WSE will assume those functions. That being the case, enabling the WSE to require the Council to collect infrastructure-related charges on its behalf is inappropriate.
  - b. Requiring the Council to collect charges set by the WSE for infrastructure and services delivered by the WSE would create unnecessary confusion among ratepayers as to the respective new roles and accountability of the Council and the WSE, which will adversely affect public confidence in the new regime. We see this already in the collection of rates on behalf of Greater Wellington Regional Council.
  - c. Collecting charges would create an administrative burden for the Council. While the Bill intends that burden to be eased by "reasonable compensation" provided for through a 'charges collection agreement', the Bill gives Council no confidence in the outcomes of that process (including, with respect, the impartiality of the Minister as arbiter of any disputes in negotiating the agreement).
  - d. The Bill is insufficiently clear as to the correct accounting treatment, and in particular GST treatment, of charges creating not only further administrative burden for Council but also potential flow on effects for Council in funding its other statutory functions.

10. Rather, the WSEs should be responsible, from their establishment, for collecting those charges. The Council is unaware of any reason, except for insufficient preparation, why the WSEs should not be able to carry out this function immediately. As such, the Council seeks that the Bill be amended to remove all provisions relating to pass-through billing.
11. If pass-through billing is to remain part of the scheme, notwithstanding the Council's strong primary position that it is unfair and inappropriate:
  - a. The Bill should require the Minister to update local authorities at least three months prior to the WSEs' establishment date regarding the WSEs' ability to collect charges from the start of the new regime. The Bill as currently drafted leaves Council uncertain as to whether the relevant WSE will require it to collect charges on its behalf.
  - b. In any event, pass-through billing should be a temporary stop-gap measure lasting no longer than six months after establishment of the WSEs. At present the maximum potential duration provided for in the Bill appears to be five years (from 1 July 2024 to 1 July 2029), which is far too long.
  - c. Any requirement that Councils provide pass-through billing should be on the basis of full cost recovery, allowing Councils to pass their costs back through to WSEs.
12. The Council seeks changes to the Bill accordingly.

#### **DELIVERING INFRASTRUCTURE NEEDED TO ENABLE PLANNED-FOR GROWTH**

13. The Bill does not support integrated planning and development and is likely to lead to poor social, economic, and environmental outcomes.
14. UHCC is extremely concerned that the growth and development needs of various communities and jurisdictions will no longer be under the direct control of councils, and this will negatively impact the economic, and in turn, social wellbeing of our communities. The provision of housing developments (and their necessary water infrastructure) at the scale and speed envisioned by central government will be hugely compromised in our view.
15. One of our key concerns is how WSEs will prioritise investment to areas and communities when there are competing outcome demands, such as safety or security of supply, versus investment to support growth and housing.
16. As the Bill is currently drafted, there is a high risk of misalignment between the development activities (and growth) planned for and approved by local authorities, on the one hand, and the three waters infrastructure delivered by WSEs, on the other. Put simply, there is a risk of significant delays to much-needed development due to a lack of coordination between Council's planning and consenting activities and target outcomes, and the WSE's water infrastructure delivery function.
17. Currently local authorities carry out all these functions and can ensure a good level of integration. Under the new regime, however, they will no longer have direct influence over three waters strategy or delivery, and the Bill currently provides no requirement for WSEs to implement local authority plans regarding growth (including the 'regional spatial strategies' to be developed under the legislation replacing the RMA).
18. To address this risk the Bill should be amended to increase the degree to which local authority plans and consents influence the infrastructure planning and prioritisation processes undertaken by WSEs, to ensure that infrastructure is provided in a timely manner where it is most needed. Options to achieve this include:
  - (a) expressly requiring a WSE's 'assessment of water services' to consider relevant local authority planning instruments and consents granted, and to incorporate and give effect to any information

provided by territorial authorities as the 'plan-maker' – thus essentially mandating the WSE's obligation as a 'plan-taker'; and

- (b) requiring the chief executive of WSEs, when giving public notice of specified planning documents – such as asset management plans and funding and financing plans – to prepare and publish a report on how the document enables growth and development as anticipated in relevant local authority plans.

19. The Council seeks changes to the Bill accordingly.

## **STORMWATER FUNCTIONS AND PROVISIONS**

20. The Council's view is that the provisions relating to stormwater planning, management, and cost-recovery are confusing, unclear and the result is a wide range of issues and inequities, particularly in respect of stormwater management plans and the ability to charge for stormwater infrastructure.

21. Stormwater management is fundamentally related to land-use planning and management, and we are deeply concerned about the current attempt and provisions to separate these functions to be delivered by LGOs and WSEs respectively.

22. In particular, there is a lack of clarity regarding the role of territorial authorities in developing proposed stormwater management plans. For example:

- (a) It is unclear what is meant by the requirement for territorial authorities to 'work with' the WSE to develop the plan. The Bill does not set out any parameters regarding this process, including any safeguards to ensure that it will not place unreasonable demands on the Council's resources.
- (b) The Bill does not clearly specify that local authorities must be involved in a WSE's review of its the stormwater management plan, and it should do so. Section 257(1) should be amended to refer specifically to a review under section 259, thus replacing the uncertain requirement to '[consider] changes to'.

23. At present the residual stormwater responsibility and functions remaining with councils are yet to be determined through the reform transition process. The extent of this could have major implications for councils to continue to manage stormwater while not being able to rate to fund it. The boundary with the WSE stormwater assets is key to this. For example, if all stormwater components associated with transport infrastructure in the roading corridor remains, this is a substantial activity and councils need to be able to plan for, resource and fund this function.

24. The Council is also concerned about the Bill provisions in respect of stormwater charging, which appear to be unfair (and are unclear).

25. That is, after 1 July 2027 or an earlier (unspecified) date when input methodologies are in place, persons who own property are, in most cases, liable to pay charges for stormwater services if they are set by the WSE. In the interim period from 1 July 2024, WSEs have a discretion to invoice territorial authorities directly for all stormwater services. The Council's concerns include that:

- (a) The Bill is unclear as to whether territorial authorities are able to pass on such charges to specific developers, if appropriate in the circumstances. The Bill should set out clearly if there is an ability to do so, and the preferred method.
- (b) Problems would arise in either case. For example:

- (i) if the Council is unable to pass on such charges, this could lead to its ratepayers (as a whole) effectively funding infrastructure for the benefit of certain developers, particularly given that the Bill removes the Council's ability to levy development contributions or financial contributions for stormwater infrastructure; and
  - (ii) if Council is able to pass on those charges, the problems associated with 'pass-through billing' noted above would arise.
- (c) It is unclear if the relevant WSE will in fact invoice the Council for stormwater services. The Bill should require the Minister to inform local authorities at least three months prior to the establishment date as to the likelihood of this occurring.

26. Council seeks changes to the Bill to remedy these issues. Council is unable to further specify the changes it seeks because the deficiencies in the legislation are so wide ranging and it may be that the approach to stormwater should be reconsidered in its entirety, or potentially be excluded from the reform.

### **OVERALL COMPLEXITY AND UNCERTAINTY OF DYNAMICS BETWEEN COUNCIL AND WSE FUNCTIONS**

27. The functions of the WSE set out in this bill and the principal act, leave a complex and uncertain picture of the future state with regards to the totality of Council's relationship and interactions with the WSE.
28. Across a range of functions and changes being worked through as part of the transition there remains significant questions of what residual functions and activities Council will have, including working with the WSE across its activities
29. Council seeks that the overall implications of the bill for local authorities be considered and further clarified, so that Council can plan for appropriate resourcing, funding and associated requirements.
30. The timing of this is particularly important and pressing as councils embark on developing their Long Term Plan 2024-2034 in the coming months.

### **Closing statement**

In conclusion, Upper Hutt City Council maintains that central government should reconsider provisions in this Bill, and that the implementation of any solution should be delayed allowing time for a "right first time" solution to be rolled out, rather than rushing through what will be a major and generational change for all New Zealanders.

UHCC entered the Three Waters Reform Programme in good faith and hopes that central government will continue in the same vein to explore what is best for people in all of the four community well-beings and not just for the economics and ideology of the case.

**We would like to speak to the Finance and Expenditure Committee in support of our submission.**

Yours sincerely,



Wayne Guppy  
**Mayor, Upper Hutt City Council**