



13 June 2024

Committee Secretariat  
Finance and Expenditure Committee  
Parliament Buildings  
Wellington 6140

Members of the Finance and Expenditure Committee

## **Local Government (Water Services Preliminary Arrangements) Bill**

Upper Hutt City Council (the Council) welcomes the opportunity to submit on the Local Government (Water Services Preliminary Arrangements) Bill.

The delivery of safe, reliable drinking water, wastewater and stormwater services for current and future generations is contingent on cooperative working relationships between local government, iwi, and our partners in central government.

We note that there is an inherent risk with tight consultation and submission periods for matters of importance to inadvertently be missed.

### **Our Council**

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 our residents and visitors to the region.

### **Introduction**

This submission focuses on the following aspects of the Bill:

- Cost, capability and timing implications
- Support for requirement to submit water service delivery plans.
- Alternative consultation and decision-making requirements
- Foundational Disclosure
- Legislative pathway – Third bill

### **Submission comments**

1. We are concerned that the extent and timing of reforms is stretching the capability and capacity of both central and local government. The consequential risk is rushed, compartmentalised decision-making, without comprehensive consideration of the consequences for councils and New Zealand communities.

2. The timeline for territorial authorities to submit a water services delivery plan within twelve months of the bill's enactment is unrealistic. Given the opportunity and expectation for councils to explore establishing, joining or amending a water services council-controlled organisation, Upper Hutt City Council believes it is necessary that this be deferred by at least a further twelve months.
3. The current proposed timeframe is particularly problematic with the Government's programme for the enabling legislative still being in development.
4. We note the bill is silent on the expected consequences of Council no longer providing water services and owning assets in the current form. Consideration needs to be given to appropriately managing stranded assets, overheads and financial responsibilities that could remain with councils beyond any transition to a different delivery model or entity.
5. We note that a further bill, to be introduced in December 2024, will set out a comprehensive range of options, tools and models that will enable councils to exercise choices around optimal water service delivery structure, method, and funding arrangements. Upper Hutt City Council believes that this third bill is required before substantive public consultation and council decision-making can be achieved.
6. Based on Government direction that councils will be required to develop a water services delivery plan by mid-2025, Upper Hutt City Council is working with council participants towards a potential joint water services delivery plan and consideration of future delivery models. An Advisory Oversight Group (AOG) chaired by Dame Kerry Prendergast has been formed to facilitate a joint water service delivery plan process, alongside iwi/Māori partner representatives.
7. The AOG is not a formal committee and does not have any decision-making rights. There are ten council participants: Greater Wellington Regional Council, Horowhenua District Council, Masterton District Council, South Wairarapa District Council, Hutt City Council, Wellington City Council, Porirua City Council, Upper Hutt City Council, Carterton City Council, and Kāpiti Coast District Council.
8. Upper Hutt City Council makes this submission in addition to this regional group's submission.

#### **COST, CAPABILITY AND TIMING IMPLICATIONS**

9. Implementation of this reform requires a firmer commitment from Government to work effectively with councils and a recognition that aspects of the reforms will take years to bed in. Timing and enabling flexibility in the implementation approach are critical to support the development of the required capacity and capability of Councils and/or Council Controlled Organisations (CCO) to meet regulatory standards.
10. The cost and resource implications are both unclear and significant for councils, making it challenging to plan for or fund these. For example, our Council and so far as we are aware none of the region's other councils we are working with have any funding in our long term plans for the establishment of a new WSCCO – which based on the equivalent establishment of a regional entity under the previous reform model could come at a very significant cost in time and money. Ultimately, the ratepayer will pay and ratepayer affordability is a very real issue.
11. We disagree with the statement in the Regulatory Impact Statement that preparing a WDSP will only require a relatively limited amount of resource and time (40-80 hours for one FTE depending on the council size) and that the information is readily available from long term plans.
12. In particular if the WDSP is to be based on the establishment of a potential new WSCCO it adds significant complexity, cost and additional new work to be done to plan and implement such a model via the WDSP. As a result, we seek that if a council is joining a regional entity it is automatically given an extension to the

timeframe for completion of the WDSP (in line with our recommendation to extend the timeframe to two years after the bill is enacted).

13. Water reforms will take time and money to embed and mature. In this environment, it will be vital that regulation plays a constructive and proactive role to support and work with Councils, Taumata Arowai, and the Commerce Commission to meet bottom lines and regulatory standards.
14. Regulation places a significant resourcing and long-term planning demands on an organisation. Upper Hutt City Council consider that it will be important to take a transitional approach to water services management and financially sustainable delivery models that meet regulatory standards.
15. We are concerned that the implications of the proposed timeframe, resourcing and costs will be particularly significant for smaller councils such as ourselves, including where we are expected to work with larger councils on potential regional models creating an unfair burden where there is least ability to respond.

### **SUPPORT FOR REQUIREMENT TO SUBMIT WATER SERVICE DELIVERY PLANS**

16. The Council supports the broad policy for laying the foundation for a new framework of water services management and financially sustainable models that meet regulatory standards.
17. Water service delivery plans have an important role in setting out local authority's proposed approach to the long-term delivery of safe, reliable drinking water, wastewater and stormwater services for current and future generations.
18. Upper Hutt City Council consider that twelve months is an insufficient time to properly consider options that may involve collaboration between councils. Preparing a service delivery plan will be a challenging task for both technical and collaborative reasons. The timeframe of the legislative programme as noted above is a key concern due to the uncertainty this leaves on what the full legislative requirements will be.
19. Where multiple local authorities are involved (such as the shareholding councils of Wellington Water Ltd), the accountability arrangements, levels of service across the service area, and equitable charging policies will need full visibility and agreement in substance before finalising and submitting a water services delivery plan.
20. At this stage, little is known about the financial sustainability rules that are referred to in the legislation. This is also the case regarding the detail of regimes for economic regulation, which is critical to the analysis of different service delivery options.
21. The bill proposes that the water service delivery plans have a planning horizon of ten years, with three years provided in detail. Setting the optimal planning horizon and cycles are critical to ensure longer-term innovation and investment planning to address complex issues.

Councils throughout New Zealand are facing immediate infrastructural and financial challenges. Ten years is not sufficient to make truly informed judgements about water service networks. Upper Hutt City Council submits that planning is aligned (at minimum) to the infrastructure strategies and associated planning within Long Term Plans.

#### **Recommendation: due date for service delivery plans**

- **That clause 16(1) be amended to allow local authorities up to two years from the date on which the Act comes into force.**

#### **Recommendations: Service delivery plan purpose and planning horizon**

- That clause 8(1)(iv) be amended to read “...future development strategy, district plan and long-term plan”.
  - That clause 13(1) be amended to require service delivery plans to cover a period of at least 30 consecutive financial years.
  - That clause 13(2) be deleted.
22. The content requirements for service delivery plans need clarification. We expect intense public scrutiny of the decisions and actions that Upper Hutt City Council take. It is important that the requirements for the service delivery plan are clearly specified to enable constructive community engagement and transparency for any challenge.
23. The contents of clause 11(1) are quite detailed, covering matters such as the financial projections, capital and operating expenditure, asset conditions and values and so on. Clause 11(1)(a) requires local authorities to include information about the state of water services. It is not clear what policymakers are expecting. This would be the logical place to disclose these expectations, as it isn't covered elsewhere in clause 11(1).
24. Clause 11 (1)(d) requires the local authority discuss whether (and to what extent) services comply with regulatory standards. Regulatory standards (or the stricter enforcement of them) are a major driver of current and future expenditure.
25. The phrase “and to what extent” is really asking local authorities to set out which standards are being complied with and how the water services plan intends to resolve that. If this the case, local authorities would have to capture not just the current situation, but anticipated or known regulatory changes in these standards. This is an additional and significant piece of work over the status quo within the short timeframes proposed.
26. Clause 11 (1)(g) requires local authorities to disclose the values of assets. It is necessary for local authorities to be directed to use asset values as set out in respective 2023/34 Annual Reports (or similar). This will be essential for meaningful comparative analysis between local authorities.
27. Disclosure of capital and operating programmes could add significantly to the length of a plan, which does not add much to the overall transparency. Upper Hutt City Council submit that the following requirements would be sufficient and consistent with requirements for long term plans and infrastructure strategies:
- a description of the significant capital projects, their estimated cost and when they are expected to occur.
  - a projection of capital expenditure for each year in the plan classified by primary driver (levels of service improvements, changes in demand, and renewals).
  - a projection of operating expenditure on maintenance, salaries and other costs.
  - a link to the relevant asset management plans for drinking water, wastewater and treatment disposal, and stormwater disposal on a website owned or maintained by the local authority.

#### **Recommendations: Content of service delivery plans**

- That clause 11(1)(a) be deleted as duplicating information in the rest of clause 11(1).

- That clause 11(1)(d) be amended to read (i) whether water services comply with current regulatory standards and will comply with anticipated future standards and (ii) where standards are not being or will not be complied with, a description of the nature of the non-compliance and how the plan will bring water services into compliance.”
- That clause 11(1)(h) be amended by deleting the words “asset management approach” and requiring that local authorities include a summary disclosure about capital and operating programmes with appropriate links to asset plans on the internet.
- That clause 11 be amended to add a requirement that service delivery plans include a disclosure of the significant forecasting assumptions used to develop the plan including, but not limited to: changes in population, changes in demand, levels of service and the timing and amount of third-party revenues.
- That clause 11 be amended to require that the financial information in service delivery plans be subject to generally accepted accounting practice, where there is an applicable standard.

28. There is no timetable on the Secretary’s consideration and acceptance of service delivery plans. Clause 16 requires that service delivery plans be submitted to the Secretary of Local Government for review and acceptance. Clause 18 sets out requirements if the Secretary accepts the plan and alternatively if the Secretary wishes to direct amendments to the plan.

This means that there is no statutory obligation on the Secretary to progress a review in a timely way. Our council and community require certainty as soon as possible and submit that the Department should be able to return plans within two months of receipt and resource itself accordingly.

**Recommendation: Acceptance of a service delivery plan**

- That clause 18 be amended to require the Secretary to advise the territorial authority or joint arrangement of a decision to accept a plan or to direct amendments within two months of receipt.

**ALTERNATIVE CONSULTATION AND DECISION-MAKING REQUIREMENTS**

29. Part 3 of the bill sets out optional alternative consultation and decision-making requirements for territorial authorities to use if they wish to when establishing, joining, or amending a water services council-controlled organisation. However, if alternative requirements are not used, the relevant, more broad requirements for consideration of all practicable options and consultation in the Local Government Act 2002 continue to apply.
30. Clause 51 (2)(b-c) states that the territorial authority may identify additional options for delivering water services; and must assess the advantages and disadvantages of all options identified before Council make a decision on whether to make use of the streamlined process provisions.
31. This substantive change to how water services are delivered requires both the understanding and comfort of our community, ensuring that local voice is respected.
32. The decisions that local authorities make are likely to have significant impacts on lands and waters. Neither this legislation nor the Government’s public announcement give any clear guidance as to the role of iwi and Māori are to play in the future of water services. It appears to have been left for local authorities and their communities to come to an agreement on this.

#### **Recommendations: The consideration of community and iwi/Māori views**

- That the bill be amended to explicitly include a requirement for local authorities to demonstrate how the WDSP and related decisions have considered community and iwi/Māori views from consultation.
- That clause 17 be amended to include the Minister accepting community opposition to the options presented under the streamlined consultation process as a reason to grant an extension to the timeframe for completion of the WDSP.
- That clause 11 be amended to require local authorities to state how the proposed water service providers will engage with its customers and the community as a whole.

#### **FOUNDATIONAL DISCLOSURE**

33. Foundational disclosure is set out in Subpart Three of Part Two of the Bill. The information on the current state of water services will lay the foundation for individual disclosure as part of a future comprehensive economic regulation regime.
34. Water services are an example of a natural monopoly that is in each service where there are high barriers or start-up costs that prevent others from readily entering the sector. Water services require an infrastructure of treatment, distribution or disposal facilities that come with substantial initial capital costs and ongoing life-cycle costs. To ensure accountability for the management of operations and ratepayer confidence that they are receiving value for money, it is agreed that there is a need for the economic regulation of water services.
35. Economic regulation must protect consumers from problems that can occur in markets with little or no competition; such as higher prices or excess profits; lower quantities than economically efficient; or lower/deficient quality of service. Clause 33 sets the framework for the Commerce Commission to start its role as an economic regulator, which is supported.
36. Any regulatory regime must provide for the sustainable delivery of water services (across all three water services of drinking water, wastewater and stormwater) over the long-term. Clause 32 does not specifically recognise the need for long-term sustainability of services and this would be strengthened by reference to a 30 year planning horizon.

#### **Recommendations: Recognition of the need for long-term sustainability of services**

- That clause 32 (1) have the words added 'and to ensure long-term sustainable delivery of water services'.
- That clause 32(2) (a) (iii) be amended to read "...reflect compliance with regulatory standards and consumer demands...".

#### **LEGISLATIVE PATHWAY – BILL THREE**

37. There are some important matters that bill two does not traverse and are held over for bill three later in the year (expected December 2024).
38. It is not clear how the Government intends to give effect to its commitments to establish a separate class of financially separate, yet council owned CCO's and whether there will be any differences in the powers and accountabilities of such entities.

39. Accountability of water providers in general is also missing. Although, there is some steer regarding economic regulation through foundational disclosure provisions.

40. The bill is also silent on the detailed powers that non-council water providers will have. For example, will staff of the separate CCO entity have powers to enter property and to set bylaws and under what conditions? This is an essential part of managing complex water services infrastructure, that often traverses private property.

## **Conclusion**

Thank you for the opportunity to submit on this bill.

To close, we reiterate the main points as follows:

- Upper Hutt City Council maintains that timing provisions within the bill must be reconsidered to allow for a “right first time” solution.
- Lack of visibility and ongoing uncertainty of the full view of the Government’s expectations and requirements for councils
- Aligning the work required

Regulated water services delivery as enabled by this bill in support of implementation of the Government’s *Local Water Done Well* policy is a major and generational change for all New Zealand.

We welcome the opportunity to make an oral submission to the Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Wayne Guppy', written in a cursive style.

Wayne Guppy

**Mayor I Koromatua**

**Upper Hutt City Council**