

5 July 2023

Committee Secretariat
Governance and Administration Select Committee
Parliament Buildings
Wellington 6140

Members of the Governance and Administration Select Committee

Water Services Entities Amendment Bill

Wellington City Council (the Council) welcomes the opportunity to submit on the Water Services Entities Amendment Bill.

Council acknowledges the Finance and Expenditure Select Committee's consideration of our submission to the Water Services Entities Bill in July 2022, and the Water Services Legislation Bill and the Water Services Economic Efficiency and Consumer Protection Bill in February 2023.

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, the Water Service Entities (WSE) and our partners in central government, with the council-WSE relationship being a critical one for the success of three waters reform.

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

Water services in Wellington City

The Council's water services network (for drinking water, wastewater, and stormwater) includes 2,653km of pipes, 65 reservoirs, 103 pump stations and three treatment plants, with a combined value in the billions. Our water services system, by its very nature, is largely out of sight and can easily be overlooked. In December 2019 and into early 2020 several high-profile pipe failures, particularly in Wellington's wastewater network, led to concerns about the condition of the city's underground infrastructure. These water services challenges that Wellington faces are by no means unique, with local authorities throughout the country grappling with aging infrastructure and the increasing costs of upgrades.

In responding to these challenges, the Council established a Mayoral Taskforce on Three Waters in 2020 to inquire into specific issues related to water in Wellington. The Taskforce unanimously agreed that transformational change in governance, asset ownership, funding and management is required to lift the city's water services network performance to the level appropriate for a modern, inclusive, and environmentally sustainable city.

Our key comments on the Water Services Entities Amendment Bill

We recognise that the Water Services Entities Amendment Bill (Amendment Bill) is an omnibus Bill that amends more than one Act. The amendments deal with an interrelated topic, which is regarded as a single broad policy to provide for, and adjust, the establishment, governance, functions and accountability arrangements for 10 publicly owned water services in New Zealand, in place of local authorities. The policy approach amends the transitional arrangements within the Water Services Entities Act 2022, to ensure that those arrangements align with the establishment of 10 water services entities between 1 July 2024 and 1 July 2026. Transitional arrangements for local authorities include responsibilities for planning, reporting and rating, during an establishment period.

A pragmatic approach to transition

Most territorial authorities will continue to be responsible for delivering and funding water services during the first year or two of the 2024/34 LTP, until the establishment of water services entities to deliver water services. The Amendment Bill deals with this via transitional provisions to modify some of the standard legislative requirements for Council accountability documents (such as the Long-Term Plan). This pragmatic approach addresses the varied transition dates for the transference of interests in, and the ownership of, infrastructure assets from local government organisations to the water services entities.

We would encourage the Committee to obtain advice to ensure that these requirements are not inconsistent with other requirements in the Local Government Act 2002, such as the requirement to prepare planning and reporting documents that comply with Generally Acceptable Accounting Practice.

We also note that the Annual Report – Section 35(2) – has the requisite transition tools, but the Long-term plan does not. The reporting requirements for the Annual Report should align with the Long-term Plan.

Recommendation:

We recommend that the disclosure requirements for the Long-Term Plan and the Annual Report are consistent. We also recommend the Committee seek advice to ensure that the proposed amendments to the content of the 2024-34 Long-Term Plan work within the wider context of the Local Government Act.

Water Services Entities Funding Agency

The Bill proposes to set up a Water Services Entities Funding Agency (the Funding Agency), which will operate on a similar basis to the Local Government Funding Agency (LGFA) by pooling risk and achieving scale and market access benefits relating to entity financing. This option is enabled through legislation and is implemented when the Funding Agency is established as a subsidiary of one or more water service entities.

The establishment of the Funding Agency and the proposal that the Crown may lend money to the Funding Agency is appropriate.

Recommendation:

The availability and cost of debt funding will be a critical determinant of the works undertaken by the Water Service Entities. It is therefore appropriate that the Water Services Entities Amendment Bill is explicit on the role of the Funding Agency and how it will be enabled to source efficiently priced debt for the Water Service Entities. This expectation extends to any other funding providers servicing the entities. In the first instance, the Crown needs to make available to the Funding Agency (or other funding providers) either credit support or appropriate funding.

Observation:

Section 173A-F – This section outlines the baseline requirements for setting up an entity that is akin to the Local Government Funding Agency.

However, the components that are required for this entity to achieve a strong credit rating appear to be absent from the legislative direction. This may be appropriate if these components are developed through another mechanism (e.g., policy settings in the foundation documents) however, it remains unclear how the entities will be funded.

Shared Services Arrangements

Ministerial discretion with regards to Water Service Entity activities and functions is a recipe for confusion and conflict. No such discretion should be granted in the Entities' foundation legislation.

Mergers

New Schedule 2A of the WSA 2022 enables WSEs to merge if their Regional Representative Groups decide to. A specific process is followed, which is sealed by an Order in Council giving effect to the merger. The Minister can only refuse it if on reasonable grounds the process was not in accordance with the Act and the merger implementation plan.

The request may only be made by all or any of the following:

- (a) the entity's board:
- (b) a territorial authority owner:
- (c) a mana whenua representative on the regional representative group:
- (d) a consumer forum established by the entity:
- (e) an appointed Crown observer, Crown review team, or Crown manager

We note that due process surrounds consideration of a merge request and the preparation of a merger proposal. In preparing a draft merger proposal, the board must provide the draft to the monitor, Taumata Arowai – the Water Services Regulator, the Commission, any water services entity that is proposed to be part of the requested merger.

A finalised merger proposal is to be implemented only if every regional representative group decides to implement the merger proposal. This applies unless a Crown observer, Crown review team or Crown manager made the merger request, then 50% or more of the regional representatives present and voting is sufficient.

Recommendation:

For any such merger to proceed should require the supporting vote of every Council that is a shareholder.

Questions:

After the Water Service Entity establishment date, what is the minimum period before a merger proposal can be received? If merger requests can be received at any time, it would likely be disruptive to establishment processes.

When a merger implementation board has been formed, consisting of at least two existing WSE board members, do the WSE boards need to be mindful of direction from the implementation board regarding planning matters?

Conclusion

Thank you for the opportunity to submit on this bill. As the Capital City, we are well placed to work with the Government in the interests of Wellington and New Zealand and so would welcome the opportunity to make an oral submission to the Committee.



Tory Whanau
MAYOR



Barbara McKerrow
CHIEF EXECUTIVE