TE KAUNIHERA O TE AWA KAIRANGI

4 March 2025

Order Paper for Council meeting to be held in the
Council Chambers, 2nd Floor, 30 Laings Road, Lower Hutt,
on:

Tuesday 11 March 2025 commencing at 4.00pm

The meeting will be livestreamed on Council's You Tube page.

Membership

Mayor C Barry (Chair)
Deputy Mayor T Lewis

Cr G Barratt	Cr J Briggs
Cr K Brown	Cr B Dyer
Cr S Edwards	Cr A Mitchell
Cr K Morgan	Cr C Parkin
Cr N Shaw	Cr T Stallinger
Cr G Tupou	

For the dates and times of Council Meetings, please visit www.huttcity.govt.nz

Have your say
You can speak under public comment to items on the agenda to the Mayor and Councillors at this meeting. Please let us know by noon the working day before the meeting. You can do this by emailing DemocraticServicesTeam@huttcity.govt.nz or calling the Democratic Services Team on 04 570 6666 | 0800 HUTT CITY

TE KAUNIHERA O TE AWA KAIRANGI | COUNCIL

Chair	Mayor Campbell Barry
Deputy Chair	Deputy Mayor Tui Lewis
Membership:	All Councillors (11) Refer to Council's Standing Orders (SO 31.10 Provisions for Mana Whenua)
Meeting Cycle:	Council meets on an eight-weekly basis (extraordinary meetings can be called following a resolution of Council, or on the requisition of the Chair or one-third of the total membership of Council)
Quorum:	Half of the members

POWER TO (BEING A POWER THAT IS NOT CAPABLE OF BEING DELEGATED)[1]:

- Make a rate.
- Make bylaws.
- Borrow money other than in accordance with the Long Term Plan (LTP).
- Purchase or dispose of assets other than those in accordance with the LTP.
- Purchase or dispose of Council land and property other than in accordance with the LTP.
- Adopt the LTP, Annual Plan and Annual Report.
- Adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the LTP or developed for the purpose of the Local Governance Statement.
- Appoint the Chief Executive.
- Exercise any powers and duties conferred or imposed on the local authority by the Local Government Act 1974, the Public Works Act 1981, or the Resource Management Act 1991, that are unable to be delegated.
- Undertake all other actions which are not capable of being delegated by law.
- The power to adopt a Remuneration and Employment Policy for Council employees.

DECIDE ON:

Policy and Bylaw issues:

- Adoption of all policies required by legislation.
- Adoption of strategies, and policies with a city-wide or strategic focus.
- Approval of draft bylaws before the consultation.
- Adoption of new or amended bylaws.

District Plan:

- Approval to call for submissions on any Proposed District Plan, Plan Changes and Variations.

1 Work required before the making of any of these decisions may be delegated.

- Before public notification, approval of recommendations of District Plan Hearings Subcommittees on any Proposed Plan, Plan Changes (including private Plan Changes) and Variations.
- The withdrawal of Plan Changes in accordance with clause 8D, Part 1, Schedule 1 of the Resource Management Act 1991.
- Approval, to make operative, District Plan and Plan Changes (in accordance with clause 17, Part 1, Schedule 1 of the Resource Management Act 1991).
- Acceptance, adoption, or rejection of private Plan Changes.

Representation, electoral and governance matters:

- The method of voting for the triennial elections.
- Representation reviews.
- Council's Code of Conduct for elected members.
- Hearing of and making decisions on breaches of Council's Code of Conduct for elected members.
- Elected members' remuneration.
- The outcome of any extraordinary vacancies on Council.
- Any other matters for which a local authority decision is required under the Local Electoral Act 2001.
- Appointment and discharge of members of committees when not appointed by the Mayor.
- Adoption of Terms of Reference for Council Committees, Subcommittees and Working Groups, and oversight of those delegations.
- Council's delegations to officers, community boards and community funding panels.

Delegations and employment of the Chief Executive:

Appointment of the Chief Executive of Hutt City Council.

Meetings and committees:

- Standing Orders for Council and its committees.
- Council's annual meeting schedule.

Long Term and Annual Plans:

- The adoption of the LTP and Annual Plans.
- Determination of rating levels and policies required as part of the LTP.
- Adoption of Consultation Documents proposed and final LTPs and proposed and final Annual Plans.

Council Controlled Organisations:

- The establishment and disposal of any Council Controlled Organisation or Council Controlled Trading Organisation.
- Approval of annual Statements of Intent and annual Statement of Expectation for Council Controlled Organisations and Council Controlled Trading Organisations.

Community Engagement and Advocacy:

- Receive reports from the Council's Advisory Groups.
- Regular reporting from strategic partners.

Operational Matters:

- Civil Defence Emergency Management matters requiring Council's input.
- Road closing and road stopping matters.
- Approval of overseas travel for elected members.
- All other matters for which final authority is not delegated.

Appoint:

- The non-elected members of the Standing Committees, including extraordinary vacancies of non- elected representatives.
- The Directors of Council Controlled Organisations and Council Controlled Trading Organisations.
- Council's nominee on any Trust.
- Council representatives on any outside organisations (where applicable and time permits, recommendations for the appointment may be sought from the appropriate Standing Committee and/or outside organisations).
- Council's Electoral Officer, Principal Rural Fire Officer and any other appointments required by statute.
- The recipients of the annual Civic Honours awards.

TE KAUNIHERA O TE AWA KAIRANGI | HUTT CITY COUNCIL

Ordinary meeting to be held in the Council Chambers,
2nd Floor, 30 Laings Road, Lower Hutt on
Tuesday 11 March 2025 commencing at 4.00pm

ORDER PAPER

PUBLIC BUSINESS

1. OPENING FORMALITIES - KARAKIA TIMATANGA

Whakataka te hau ki te uru
Whakataka te hau ki te tonga
Kia mākinakina ki uta
Kia mātaratara ki tai
E hī ake ana te atakura
He tio, he huka, he hau hū
Tīhei mauri ora.

Cease the winds from the west
Cease the winds from the south
Let the breeze blow over the land
Let the breeze blow over the ocean
Let the red-tipped dawn come with a sharpened air.
A touch of frost, a promise of a glorious day.

2. APOLOGIES

No apologies have been received.

3. PUBLIC COMMENT

Generally, up to 30 minutes is set aside for public comment (three minutes per speaker on items appearing on the agenda). Speakers may be asked questions on the matters they raise.

4. CONFLICT OF INTEREST DECLARATIONS

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as a member and any private or other external interest they might have.

5. LOCAL WATER DONE WELL - CONSULTATION ON WATER SERVICE DELIVERY MODEL

The report will be distributed separately.

6. RETROSPECTIVE ENDORSEMENT OF WELLINGTON'S JOINT SUBMISSION ON THE LOCAL GOVERNMENT (WATER SERVICES) BILL

Report No. HCC2025/1/58 by the Strategic Advisor 8

MAYOR'S RECOMMENDATION:

"That the recommendation contained the report be endorsed."

7. PROPOSED PRIVATE DISTRICT PLAN CHANGE 58: 12 SHAFTESBURY GROVE, STOKES VALLEY - REZONING TO MEDIUM DENSITY RESIDENTIAL ACTIVITY AREA

Report No. HCC2025/1/59 by the Policy Planning Manager 73

MAYOR'S RECOMMENDATION:

"That the recommendations contained in the report be endorsed."

8. RECOMMENDATIONS TO COUNCIL FROM THE POLICY, FINANCE AND STRATEGY COMMITTEE MEETING HELD ON 11 MARCH 2025

"That Council adopts the recommendations made on the following reports, and any amendments agreed at the Policy, Finance and Strategy Committee meeting held on 11 March 2025:

a) Urban Plus Limited Group Draft Statement of Intent 2025/26 to 2027/28; and

b) Seaview Marina Limited Draft Statement of Intent 2025/26 to 2027/28."

9. QUESTIONS

With reference to section 32 of Standing Orders, a member shall endeavour to obtain the information before putting a question. Questions shall be concise and in writing and handed to the Chair prior to the commencement of the meeting.

10. EXCLUSION OF THE PUBLIC

MAYOR'S RECOMMENDATION:

"That the public be excluded from the following parts of the proceedings of this meeting, namely:

11. TE WAI TAKAMORI O TE AWA KAIRANGI COMMERCIAL MATTERS

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

(A)	(B)	(C)
General subject of the matter to be considered.	Reason for passing this resolution in relation to each matter.	Ground under section 48(1) for the passing of this resolution.
Te Wai Takamori o Te Awa Kairangi Commercial Matters.	The withholding of the information is necessary to enable the local authority to carry out, without prejudice or disadvantage, commercial activities (s7(2)(h)). The withholding of the information is necessary to enable the local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations) (s7(2)(i)).	That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding exist.

This resolution is made in reliance on section 48(1) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by section 6 or 7 of that Act which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public are as specified in Column (B) above."

Kate Glanville
SENIOR DEMOCRACY ADVISOR

Hutt City Council

25 February 2025

Report no: HCC2025/1/58

Retrospective endorsement of Wellington's joint submission on the Local Government (Water Services) Bill

Purpose of Report

1. To seek retrospective endorsement of the joint submission made by Wellington Councils and Iwi Mana Whenua Partners on the Local Government (Water Services) Bill.

Recommendation

That Council endorses its contribution to the joint submission from Wellington Councils and Iwi Mana Whenua Partners on the Local Government (Water Services) Bill as attached as Appendix 1 to the report.

Background

2. The Local Government (Water Services) Bill (the Bill) provides for:

   - arrangements for the new water services delivery system.
   - a new economic regulation and consumer protection regime for water services.
   - changes to the water quality regulatory framework and the water services regulator.

3. This is the third Bill that the government has produced as part of its "Local Water Done Well" policy programme. The first Bill repealed the previous government's water services legislation. The second Bill established the preliminary arrangements for the new water services system. This third Bill establishes the enduring settings for the water services system.

4. Read the Bill here: Local Government (Water Services) Bill 108-1 (2024), Government Bill Contents – New Zealand Legislation.

5. In 2024, an Advisory Oversight Group (AOG) was established for the Wellington region with the goal of working together on a water service delivery plan. The group is led by Dame Kerry Prendergast and consists of elected members and iwi representatives. It is supported by Chief Executives and a joint project team. Mayor Barry represents our Council within the AOG.

6. Councils provisionally decided that their preferred option for water services delivery under Local Water Done Well is a joint asset owning CCO owned by councils which would provide three waters services to nearly a half million people.

7. The joint submission is attached as Appendix 1 to the report. It was submitted to Parliament's Finance and Expenditure Committee on 21 February 2025.

Discussion

8. The joint submission focuses on achieving the objectives of Local Water Done Well.

9. The joint submission raises seven key matters:

   a. The Bill needs to set broader and stronger objectives for Water Safety Plans.

   b. The Bill gives territorial authority shareholders extensive controls over water organisations, which conflicts with the rationale for establishing a water organisation and blurs accountability to communities.

   c. The Bill needs to define the relationships all WSPs, including water organisations, are expected to have with iwi/Māori, and refer to the principles of Te Tiriti and Te Mana o te Wai.

   d. The Bill should strengthen its current protections against future privatisation of water services.

   e. The Bill should be simplified to reduce unnecessary complexity and compliance costs for WSPs and water organisations in particular.

   f. The Bill should not require Councils to enter into a transfer agreement with a water organisation within six months.

   g. The Bill's provisions regarding works on private land will hinder infrastructure provision.

Climate Change Impact and Considerations

11. There are no direct climate change implications or considerations in submitting this joint submission.

Consultation

12. The joint submission was a collaborative effort from all councils, with legal input from Simpson Grierson. There has been no public consultation in its drafting.

Legal Considerations

13. There are no legal considerations

Financial Considerations

14. There are no direct financial considerations with respect to the joint submission.

Appendices

No.	Title	Page
1⇩	Final Wellington Combined Submission on the LG Water Services Bill	11

Author: Bruce Hodgins
Strategic Advisor

Approved By: Alison Geddes
Director Environment and Sustainability

Committee Secretariat
Finance and Expenditure Committee
Parliament Buildings
Wellington

fe@parliament.govt.nz

21 February 2025

Combined submission of Wellington City Council, Hutt City Council, Porirua City Council, Upper Hutt City Council, and Greater Wellington Regional Council (Councils) with Iwi mana whenua partners Te Rūnanga o Ngāti Toa and Taranaki Whānui ki Te Upoko o Te Ika / Port Nicholson Block Settlement Trust (Iwi Partners) on the Local Government (Water Services) Bill (Bill)

INTRODUCTION

The Councils and South Wairarapa District Council currently provide water services to their communities through a jointly-owned council-controlled organisation (**CCO**), Wellington Water Limited (**WWL**), in which they are each shareholders. This is the only joint water services CCO currently operating in New Zealand.

The Councils have provisionally decided that their preferred option for water services delivery under *Local Water Done Well* is a joint asset owning CCO owned by the Councils which would provide three waters services to nearly a half million people. This is subject to consultation which is scheduled to be carried out in March - April 2025. If this preferred option is confirmed, WWL in its current form will be disestablished and replaced by the new joint CCO. That CCO will be a water organisation (**WO**) as defined in the Bill.

This submission is made with a particular focus on the Bill's provisions as they will affect WOs. The submission is informed by the Councils' experience as the owners of WWL, and a significant programme of activity to develop a joint water services delivery plan and establish a new WO.

We are motivated to have simple, clear and manageable institutional arrangements, accountabilities, regulation and transitional arrangements. This is important not only for the success of the water reforms themselves, but also to enable our communities to thrive once the reforms are in place.

We thank the Finance and Expenditure Select Committee for the opportunity to submit on the Bill, and would appreciate the opportunity to address the Committee in person.

PART 1 – OVERVIEW AND KEY MATTERS

Part 1 of this submission summarises the seven key matters that the Councils wish to raise. Part 2 is a table which comments on the Bill clause-by-clause and contains recommended changes, including in relation to the key matters in Part 1.

While the Councils and their Iwi Partners generally support the Bill, drawing upon our practical experience we have a number of key concerns:

1. The Bill needs to set broader and stronger objectives for water services providers (WSPs) to reflect broader growth, environmental and social outcomes, as well as relationships with iwi/Māori;
2. The Bill gives territorial authority (TA) shareholders extensive control over WOs, which conflicts with the rationale for establishing a WO and blurs accountability to communities for the provision of water services;
3. The Bill needs to strengthen and define the relationships all WSPs, including WOs, are expected to have with iwi/Māori, and to give effect to the principles of the Treaty of Waitangi/Te Tiriti o Waitangi and Te Mana o te Wai;
4. The Bill should strengthen its current protections against future privatisation of water services;
5. The Bill should be simplified to reduce unnecessary complexity and compliance costs for WSPs, and WOs in particular;
6. The Bill should not require the Councils to enter into a transfer agreement with a WO within 6 months; and
7. The Bill's provisions regarding works on private land will hinder infrastructure provision.

The submission elaborates on these points below.

Achieving the objectives of Local Water Done Well (LWDW)

The Councils support the fundamental objectives of LWDW: namely to keep water assets in local ownership; give councils choice as to how they wish to organise their water service delivery going forward; and provide a clear regulatory framework within which all WSPs will operate.

The second step in this Government's reforms (after the repeal of legislation passed in the previous parliamentary term), was the Local Government (Water Services Preliminary Arrangements) Act 2024 (**Preliminary Arrangements Act**). The Preliminary Arrangements Act advanced LWDW objectives by establishing a process for communities to select, on an informed basis, their preferred water services delivery model or arrangements, and to prepare and adopt a water services delivery plan (**WSDP**). All possible delivery models – in-house council delivery, a CCO (single council or jointly owned), or a consumer trust – involve council or community ownership (either direct or indirect) of the water services infrastructure currently owned by TAs (and, in the case of the Wellington region, Greater Wellington Regional Council).

The Councils are concerned, however, that in several important respects the Bill is inconsistent with, and potentially undermines, the Government's own policy objectives for LWDW, and to some extent undoes what has already been legislated for in the Preliminary Arrangements Act.

If enacted in its current form, the Bill will have a significant negative impact on all WSPs but especially WOs and impair their ability to operate successfully and achieve their statutory objectives as stated in the Bill. The Councils urge a review of the Bill's overall approach to ensure alignment with the original objectives of LWDW and the Government's wider objectives, including supporting economic growth.

TA ownership of water services infrastructure in New Zealand has generally resulted in under-investment in water services, leading to myriad problems ranging from failure to provide safe drinking water, to recurring network failures and shutdowns, to planned urban development being stymied though lack of infrastructure. While LWDW relies, in part, on regulation through the Water Services Authority / Taumata Arowai (**WSA**) and the Commerce Commission to address these issues, before any regulatory intervention occurs, competent professional

governance of water services is also required. The Bill should restore an appropriate focus on delivering safe, reliable and financially sustainable water services by removing from the Bill unnecessary or excessive prescription and control of WOs by their shareholder councils as this will blur and undermine accountabilities. Local control over water services provision does not guarantee the provision of safe, reliable and financially sustainable water services: stronger provisions in the Bill are needed to help ensure that, whatever form of service provision has been chosen by TAs following consultation on their WSDP, these outcomes are achieved across New Zealand.

We now turn to the seven key matters the Councils wish to raise.

1. **The Bill needs to set broader and stronger objectives for WSPs**

The objectives in the Bill set out in cl 15 are much too narrow, and as outlined below, they omit important matters. Further, WSPs which are TAs will continue to be subject to the Local Government Act 2002 (**LGA**) and therefore the role and purpose of local government as stated in that Act, whereas other WSPs (WOs and any consumer trust providing water services) will not be. This creates a perverse distinction on this fundamental matter between WSPs which are TAs, and those which are WOs.

The statutory objectives of WSPs are fundamentally important, setting boundaries around the scope of the WSPs' operations and the matters which will be legally relevant to any actions which they take when providing water services. Statutory objectives are important for New Zealand as a whole, because they can help to ensure that all WSPs regardless of location achieve matters that are important in all communities, and act as a safeguard against TAs not providing for such matters either directly as WSPs, or as shareholders setting the direction for a WO that they have established. Broader objectives, that are also stronger because they "must" be complied with rather than being merely aspirational, are needed to ensure that "local water" is indeed "done well".

The Councils submit that the objectives of all WSPs should be the same and should cover the matters outlined below.

Supporting housing growth and urban development in their service area

The absence of this objective in the Bill is a significant omission, which stands to undermine the Government's primary focus on economic growth as stated in the Prime Minister's State of the Nation 2025 address (23 January 2025). It is also contrary to the Government's August 2024 policy announcements on water reform, and the Preliminary Arrangements Act. Under that Act (ss 8(1)(iv) and 15(1)(b)), a WSDP had to demonstrate the TA's commitment to supporting housing growth and urban development.

By contrast, under the Bill, WSPs *implementing* the WSDP have no statutory obligations in relation to housing growth and urban development. A TA providing water services in-house may decide that urban growth is simply not a priority, and not something it is prepared to raise revenue locally (through rates) to fund. Alternatively, where TAs have established a WO, it cannot be left to the shareholders to include support for housing growth and urban development within the expectations or priorities they set for a WO via the statement of expectations (**SOE**) under cls 187: put simply, the shareholders may decide not to do so. Again, what the TAs consider affordable (or unaffordable) in their community may be the overriding concern.

The objective of supporting housing growth and urban development must instead be universal and apply to all WSPs, rather than left as a matter to be raised by the shareholders of a WO through the SOE or comments on the draft water services strategy (**WSS**).

Safety should not be confined to drinking water

The reference in cl 15(1)(a)(i) to providing "safe drinking water to consumers" would not encompass the provision of safe wastewater or stormwater services to consumers. A failure to safely treat and dispose of wastewater can lead to severe adverse health effects in affected communities e.g. gastroenteritis, skin or respiratory infections; while the severe weather events of 2023 highlight the potentially life-threatening consequences of failing to properly operate and maintain urban stormwater networks. In short, all three water services (drinking water, wastewater and stormwater) need to be provided safely by WSPs, accepting that in the case of stormwater in particular, there may be matters outside the control of the WSP that influence whether that objective can be achieved.

It is anomalous that other objectives in cl 15 – for example the provision of a service which is reliable and of a quality that meets consumer expectations – apply to *all* water services, yet in the Bill as drafted, only the provision of drinking water needs to be "safe". Further, the current reference to providing "safe drinking water to consumers" does not meaningfully add to the obligation that a WSP will have already under s 21 of the Water Services Act 2021 (i.e. to ensure that the drinking water supplied by the supplier is safe).

Exhibiting a sense of social and environmental responsibility

The objectives of WOs should go beyond the interests of customers and shareholders. As significant public entities delivering water services on behalf of TAs, they should have commensurate obligations to the community more generally. Inexplicably, this responsibility which CCOs under the LGA have (see section 59) is not carried over to WOs under the Bill.

The Councils submit that the cl 15 objectives should include "to exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates." This objective will not dictate or constrain any behaviour by a WSP but will give balance to the other objectives in the Bill as currently drafted.

Relationships with iwi/Māori

It is insufficient for the Bill to leave a WSP's relationship with iwi/Māori to the particular WSP and its shareholders to determine. The Bill should include a universally applicable, high-level objective of performing its functions "in a way that partners and engages meaningfully with Māori in water services planning and implementation".

It is noted that even with the changes to the Taumata Arowai – the Water Services Regulator Act 2020 proposed by the Bill, the operating principles of the Water Services Authority (**WSA**) will still include "partnering and engaging early and meaningfully with Māori". It is consistent for a similar objective to apply to WSPs, who will be providing the water services regulated by the WSA. Again, leaving it to WSPs to decide how they will partner and engage with Māori creates a risk that this will be given insufficient emphasis, with iwi and hapu in some parts of New Zealand meaningfully engaged by their WSP, and others simply left out. While local variation in how to partner and engage early and meaningfully with Māori is both likely and appropriate, the Bill needs to set a minimum requirement or bottom line in this area.

Objectives are merely aspirational, and should become requirements

The Bill (cl 15) includes objectives of a WSP, but no requirements or principles as such. The objectives are aspirational and operate at a high level, whereas requirements or principles (appropriately qualified) would apply at the level of specific WSP decision-making. Under the current drafting, there is no requirement for a WSP to act in accordance with the objectives set out in cl 15 – unlike, for example, s57 of the Local Government (Auckland Council) Act 2009 which states that an Auckland water organisation (i.e. Auckland Council or Watercare) "must" do certain things and "is required" not to pay a dividend. Similarly, s60 of the LGA says that all decisions relating to the operation of a CCO "must be made" under the authority of its board and "in accordance with" its statement of intent and constitution.

The Select Committee is urged to recast the objectives in cl 15 (including the additional matters noted above) as obligations or requirements. This approach would also reduce the level of direction that shareholders need to set through the SOE and WSS (see next point).

2. **The Bill gives TA shareholders extensive controls over WOs, which conflicts with the rationale for establishing a WO and blurs accountability to communities**

Under the Bill, a significant level of control is given to a WO's shareholders. Combined with the extent of legislative compliance necessary, this may compromise the WO's ability to act successfully, and on a sound commercial basis. It also appears at odds with the Preliminary Arrangements Act and the policy positions expressed in LWDW.

The Preliminary Arrangements Act provides for communities to choose their preferred water services delivery option. This satisfies the first objective of LWDW. The process is well in train. Communities are presented with (broadly speaking) two options, with distinct and fundamental differences between them: continuing TA provision of water services; or provision by a "water services CCO", as defined in the Preliminary Arrangements Act.

The concept of a CCO is well understood: a stand-alone company separate to the TA, subject to limited shareholder oversight through high-level strategy documents but otherwise free to get on with its business in a commercial way, guided by competency-based board of directors. Primary accountability for the performance (or non-performance) of the CCO's activities rests with the CCO's board.

The Bill changes this model. The water services CCO option put forward as one of the service delivery options available under the Preliminary Arrangements Act is significantly different to a WO subject to the Bill. The distinction between in-house and CCO (WO) delivery is now unclear – and the differences between these two service delivery options are significantly less than established through the Government's policy announcements from August 2024.

Further, the level of control TA shareholders can exercise over the priorities and activities of the WO will in practice allow TA shareholders and the WO each to "point the finger" at the other, if the WO fails to comply with economic, consumer protection or environmental regulation, or there is low customer satisfaction with the WO's services.

When a WO is already subject to environmental and economic regulation designed to protect the interests of consumers, TA shareholders setting substantive expectations of the WO and

setting its strategic priorities for WO through the SOE (see cl 187) may affect the ability to attract competent and experienced professional directors to the WO's board.

3. **The Bill needs to define the relationships all WSPs, including WOs, are expected to have with iwi/Māori, and refer to the principles of Te Tiriti and Te Mana o te Wai**

The Bill needs much greater clarity on the role of, and relationship WSPs must have with, iwi/Māori when providing water services, and recognise that Iwi will be key stakeholders in water service planning and decision-making. This includes under existing Treaty settlement agreements and environmental co-management frameworks that already provide a model for collaborative approaches to freshwater governance.

The rationale for the Bill's minimalist approach to issues affecting Māori is that it should be up to local councils and iwi/Māori to determine how the relationships and partnerships with Māori work in practice, rather than having a "centrally prescribed model" in legislation. This is on the basis that councils will continue to be responsible for water delivery including existing obligations in the LGA setting out how iwi/ Māori interests will be considered as part of decision-making.[1] The Briefing Paper notes the Cabinet decision that existing council or CCO obligations relating to iwi/Māori interests under the LGA will continue to apply irrespective of service delivery model.

The Bill does not achieve this aim. It fails to take into account that if the WSP is a WO, then *none* of the LGA provisions relating to council decision-making affecting iwi/Māori interests will apply.[2] Contrary to the Briefing Paper, the Bill itself says that a transfer agreement transfers responsibility to the WO (cl 9(1)(b)), but more practically once such a transfer has occurred, the TA will no longer be making decisions about water services, and therefore the TA's own obligations to Māori will not be engaged.

This is an example of a perverse difference that the Bill creates between WSPs which are TAs, and those which are WOs.

Clause 41 should require a WSP to establish and maintain opportunities for Māori to contribute to the WSP's decision-making processes. WSPs that are territorial authorities already have this obligation under s81 of the LGA: the effect of cl 41 as amended would be to place WOs under the same obligation. It is anomalous that only some WSPs (ie TAs, or a regional council that provides water services) should be required establish and maintain opportunities for Māori to contribute to the WSP's decision-making processes.

Clause 41 as currently worded is also misdirected in its focus. The obligation it imposes on a WSP is to "act in a manner that is consistent with Treaty settlement obligations when performing and exercising functions, powers and duties under this Act". If obligations are already imposed on a WSP under Treaty settlements (which have their own legislation), then cl 41 is not required. On the other hand, obligations imposed on other parties (such as the Crown) under Treaty settlements will not generally be relevant to WSPs. Further, in some parts of the country Treaty settlements have not yet been reached: in those areas, cl 41 (because it relates to "Treaty settlement obligations" as defined in that clause) would impose no obligations on WSPs in terms of how they engage with or otherwise interact with iwi and hapu. A more appropriate direction

1 Briefing to the Minister of Local Government dated 3 October 2024 (**Briefing Paper**).

2 Section 60A, which also applies to CCOs, will apply. However, this is the only provision in Part 5 of the LGA imposing obligations on CCOs in relation to iwi/Māori interests, noting that a statement of expectations under s64B *may* address this matter.

under cl 41 would be to take appropriate account of the principles of the Treaty of Waitangi/ Te Tiriti o Waitangi (rather than "Treaty settlement obligations" as defined).

In addition, cl 41 should require a WSP to give effect to Te Mana o te Wai when performing its functions, power, or duties under the Act. This would be consistent with s14(2) of the Water Services Act 2021, which states that "when exercising or performing a function, power, or duty under this Act, a person must give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to the function, power, or duty". Importantly, however, it would go further insofar as the Water Services Act 2021 relates primarily to the obligations of *drinking water* suppliers, whereas WSPs under the Bill are also responsible for wastewater and stormwater services.

The Bill also fails to ensure that the mix of skills, knowledge, and experience required on the Board of a WO (see cl 40) includes knowledge and understanding of Te Mana o te Wai outcomes and Te Tiriti o Waitangi. Some TA shareholders of a WO may decide that these matters are important when appointing directors to the WO Board, while others may not. This approach risks these vital competencies not being present on the boards of some of New Zealand's new WOs. Amendments to cl 40 are required to make knowledge and understanding of Te Mana o te Wai outcomes and Te Tiriti o Waitangi a mandatory competency that must be held by at least some directors on a WO's board.

4. **The Bill should strengthen its current protections against future privatisation of water services**

A key aspect of the Government's August 2024 policy announcements was that the future Local Government (Water Services) Bill would contain protections against the privatisation of water services. The only provision in the Bill that reflects this policy position is cl 37(2), which states:

> (2) A water organisation must be wholly owned by—
> (a) 1 or more local authorities; or
> (b) 1 or more local authorities and the trustees of 1 or more consumer trusts; or
> (c) the trustees of 1 or more consumer trusts.

However, a TA may apply to the Secretary for Local Government under cl 55(5) for an exemption from this requirement, if it "intends to establish a water organisation that is owned by shareholders of a co-operative company". The ability to obtain an exemption opens to the door to the possible privatisation of water services, by allowing shares in a WO to be owned by an entity other than a TA or consumer trust. This is contrary to the policy direction signalled under LWDW.

The Councils therefore urge that:

- Clause 37(2) be supplemented by a new subclause (2A) which states that, for the avoidance of doubt, a local authority or trustee of a consumer trust is prohibited from transferring its shareholding in a WO to anyone other than another local authority or trustee of a consumer trust that owns or co-own a WO; and

- Clause 55(5), which provides for an exemption from the requirement of local authority or consumer trust ownership of a WO, be deleted.

5. **The Bill should be simplified to reduce unnecessary complexity and compliance costs for WSPs, and WOs in particular**

The Bill is extremely detailed and complex. This is contrary to the overriding purpose of the Bill (cl 3) which is to "establish a framework for local government to provide water services in a flexible, cost-effective, financially sustainable, and accountable manner". Flexibility and cost effectiveness in the delivery of water services are undermined by several aspects of the Bill.

For many issues it should be possible for WOs to be governed by the existing CCO provisions in the LGA, supplemented by minimal bespoke provisions that are necessary because of the special circumstances of WOs, as well as the general law which applies to all companies (including other utility providers).

By way of illustration, at present only 22 sections in the Local Government (Auckland Council) Act 2009, as well as the general CCO provisions in Part 5 of the LGA, apply to Watercare. There is no evidence that Watercare has been unable to effectively carry out its water services functions under its statutory regime. Watercare funds its operations from customer charges that have no statutory basis: the charges paid by its customers are purely contractual. These charges include both fixed and volumetric charges for the provision of water and wastewater services, and infrastructure growth charges in lieu of development contributions charged elsewhere in New Zealand by TAs under the LGA to fund capital expenditure on growth-related infrastructure. By contrast, the Bill contains detailed provisions relating to charges and development contributions, notwithstanding that as a legal person WOs would (like Watercare) be free to set charges of all types as a matter of contract.

For TAs which are WSPs, it should be possible to largely rely on existing LGA provisions which govern all activities of TAs rather than to create a parallel regime which increases the complexity of the TA's operations and compliance obligations. In many cases, the relationship between the LGA regime and the Bill's provision covering the same matter is unclear. For example, the Bill does not state that its provisions in relation to works on private land (see cl 115 to 120) apply in place of their LGA equivalents. That being so, it is unclear whether a TA WSP could simply bypass the regime in cls 116 to 120 of the Bill, and rely instead on the more favourable LGA regime in s181 and Schedule 12 of that Act (noting that a WO would not have this option).

Another example of unnecessary complexity relates to drinking water catchment plans (cl 143). It is not apparent why a TA should be responsible for preparing a drinking water catchment plan where a WO is providing drinking water services. A TA that has transferred its water services functions to a WO is likely to lack the capability to produce such a plan. While a TA can delegate the preparation of a drinking water catchment plan to the WO under cl 143(2), it is not required to do so. The responsibility to prepare the plan should automatically rest with the relevant WSP. Further, the drinking water catchment plan largely duplicates existing requirements under s 43 of the Water Services Act 2021 to prepare a source water management plan.

6. **The Bill should not require the Councils to enter into a transfer agreement with a WO within 6 months**

The definition of water organisation in cl 4 of the Bill includes a CCO that "immediately before the commencement of this Act, was providing water services", and "intends to continue to provide water services on and after the commencement date". On that basis, WWL is likely to be a WO once the Bill comes into force, even if in due course it is dis-established and a new WO

owned by the Councils is established in its place to provide water services in the relevant service area.

DIA's factsheet on the Bill states:

Council-controlled organisations (such as Watercare) that currently provide water services – and will continue to do so after the Bill is enacted – will automatically become water organisations, upon enactment. This means they will be subject to the new Act, and the responsibilities that apply to other water service providers.

Where a CCO becomes a water organisation and does not already meet the statutory requirements that apply to water organisations, it has six months following enactment to make the changes needed (or for territorial authority shareholders to obtain an exemption, if relevant). Similarly, a territorial authority that is a shareholder in a CCO that becomes a water organisation has six months in which to provide a transfer agreement, to formalise the responsibilities and other matters held by the organisation and the authority.

While WWL may be able to meet the statutory requirements that apply to WOs, it is not clear where/how the Bill requires a transfer agreement to be entered into between the Councils and WWL (or a new WO) within 6 months of the Bill coming into force. It would not be possible for the Councils to meet this timeframe. Urgent clarification has been sought from DIA about the basis for this statement in its factsheet.

7. **The Bill's provisions regarding works on private land will hinder infrastructure provision**

The regime proposed in the Bill for entry into private land (see cl 116 to 120) does not sensibly balance the rights and interests of the landowner with those of the WO and will be unworkable. If enacted, it will be a significant impediment to a WO's day-to-day operations, and make the delivery of water services infrastructure by WOs slower and more expensive than under the current LGA regime. As these costs and delays will ultimately be borne by the WO's customers (households and businesses), it will make water services less affordable and hinder economic growth.

The Bill contains no general power for a WO to enter land, even for non-intrusive actions. In every case the WO must go through a highly prescriptive notice procedure which, if consent is not given or unreasonable conditions are imposed, or agreement cannot be reached, escalates to the District Court. In the meantime, the land cannot be entered even, say, to carry out a visual inspection.

By contrast, currently under the LGA the consent process is only needed when physical works on the land are proposed. The LGA gives a general power of entry onto land (but not a dwellinghouse) in s 171 "for the purpose of doing anything that the local authority is empowered to do under this Act or any other Act". The Bill needs an equivalent provision: cl 116 and 117 processes are limited to entry for the purposes of carrying out physical works on the land.

Currently under the LGA, a landowner who does not consent to a local authority undertaking work on their private land that is necessary for water supply, wastewater or stormwater purposes has a right of objection to the TA, and after that a right of appeal to the District Court, whose decision is final: LGA s181 and Schedule 12. The current process in the LGA should also apply where a landowner does not give consent or imposes unacceptable conditions. It puts the

onus on the landowner, rather than the TA, to take the matter to the District Court. In practice this can act to filter out unmeritorious objections.

Under cl 120(5), on appeal to the District Court, the Court may authorise a WSP to carry out construction works or infrastructure placement only if satisfied that "no practical alternative exists". This sets the bar too high – notably higher than other equivalent requirements such as to give adequate consideration of alternatives – see s 204 of the now repealed Water Services Entities Act 2022, or s 171 of the Resource Management Act 1991. For example, there may be more than one route that a water or wastewater pipeline can take (i.e. a practical alternative *does* exist): however, every route involves private land, or only one of the routes allows conveyance entirely by gravity whereas the alternative routes require water or wastewater to be pumped (which is both more expensive and less resilient than using gravity). The test being set in this way under cl 120 is likely to prevent WSPs from being able to provide infrastructure on private land due to the inability to meet the "no practical alternative" requirement.

In general, the powers of entry provisions in the Bill are overcomplicated and in places confusing. It is unclear why the more straightforward regime under the LGA, which staff involved in water services are already familiar with, cannot be used rather than creating a more complex and less workable regime in the Bill.

Note regarding Greater Wellington's position on two areas

While Greater Wellington supports this joint submission, it will also provide its own submission to elaborate on two critical areas: the impact of water services organisations on te taiao / the natural environment and the positioning in relation to mana whenua partnerships. Greater Wellington will take a stronger position than that agreed by the joint councils. Greater Wellington will also submit in relation to how existing legislation relating to its powers and functions for water supply need to be addressed.

Conclusion

The Councils and our Iwi Partners are committed to a sustainable financial model for water services that can deliver network resilience, enable growth, improve harbour and catchment health, and provide excellent, affordable services to our community.

We want to work with Government to ensure that the new water services regime provides the right mechanisms for success. For these outcomes to be achieved, further consideration of the Bill as drafted is required, supported by a commitment to work with local government through the implementation process.

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

Ngā mihi

Kerry Prendergast

Dame Kerry Prendergast
Chair, Advisory Oversight Group (AOG)
Wellington metro water services delivery plan

For and on behalf of:

Council / organisation	**AOG Representative**
Chair	Dame Kerry Prendergast
Greater Wellington Regional Council	Cr Ros Connolly
Upper Hutt City Council	Mayor Wayne Guppy
Hutt City Council	Mayor Campbell Barry
Porirua City Council	Mayor Anita Baker
Wellington City Council	Mayor Tory Whanau
Te Rūnanga o Ngāti Toa	Helmut Modlik, Tumu Whakarae - Chief Executive Officer
Taranaki Whānui ki Te Upoko o Te Ika / Port Nicholson Block Settlement Trust	Kara Puketapu-DenticeTumu Whakarae | Chief Executive Officer

Address for service in relation to this submission:

Programme Director, Dougal List.
Dougal.list@scottconsulting.org

Part 2 – detailed comments on specific clauses of the Bill

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
Part 1 – Preliminary provisions		
3.	The opening words in the primary purpose in cl 3(a) focus on the positive aspects of the proposed framework without any balance reflecting potential limits on achieving those matters. This would give rise to a one-sided assessment of whether any proposed action is consistent with the purposes of the Bill. Compare cl 3 with the obligations on Watercare under s 57(1)(a) Local Government (Auckland Council) Act 2009, which qualifies the positive obligation to provide services at minimum cost with the words "consistent with the effective conduct of its undertakings and the maintenance of the long-term integrity of its assets". That section also refers to "customers", who are not mentioned in cl 3. The purpose should include creating a framework that provides for customer-focused water services, in which case the reference to accountability can be removed. Nor is environmental sustainability mentioned, only financial sustainability. "Flexibility" relates more appropriately to the framework being established, not the way water services are provided.	Appropriately qualify purpose in cl 3(a) to take into account real life limits on achieving the purposes, and wider matters. Amend clause 3 as follows: (a) to establish a <u>flexible</u> framework for local government to provide water services in a ~~flexible~~ <u>customer-focused</u>, cost-effective, financially <u>and environmentally</u> sustainable~~, and accountable~~ manner
4.	<u>Definition of "overland flowpath"</u> The definition in the Bill is "any flow path taken by stormwater on the surface of land". This is so broad as to be impracticable and uncertain. The definition of overland flow path in the Auckland Council Unitary Plan, widely used and accepted by local government organisations, would provide certainty as to what is included in these paths.	The definition should be amended to provide that "overland flow path" means "low point in terrain, excluding a permanent watercourse or intermittent river or stream, where surface runoff will flow, with an upstream contributing catchment exceeding 4,000m².".

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	Definition of 'stormwater network' Subcl (b) of the definition of "stormwater network" includes an overland flow path, green water services infrastructure, and watercourses that are part of, or related to, the infrastructure referred to in subcl (a). This particular wording makes it unclear whether an overland flowpath on private land is to be regarded as part of the stormwater network. It is unlikely to be "part of" the infrastructure operated by the WSP referred to in subcl (a), but arguably it is "related to" that infrastructure if stormwater runs across an overland flowpath into a culvert or drain that is owned by the WSP. The importance of this is that a stormwater risk management plan under cl 167(1) must contain a map of the stormwater network (which on the interpretation above would include all overland flowpaths that "connect" in some way to a WSP drain). Clause 167(1) also includes a separate requirement to identify all overland flow paths and watercourses "that receive stormwater from, or take stormwater to, other infrastructure in the network". Reading clause 170 relating to stormwater network bylaws, it seems apparent that the intention is for an overland flowpath on private land to be part of the stormwater network. Clause 164 also states that a WSP's responsibility for management of the stormwater network "extends to overland flow paths and watercourses that are a part of (sic) network". The solution to resolve the uncertainty is to remove the link in subcl (b) to subcl (a), so that an overland flow path, green water services infrastructure, and watercourses are treated as part of the stormwater network regardless of whether or not they are "part of" or "related to" the physical infrastructure owned or operated by the WSP; or alternatively to use the more precise wording found in cl 167(1)(f). Definition of 'stormwater service'	Delete from subcl (b) of the definition the words "includes any of the following that is part of, or related to, the infrastructure referred to in paragraph (a)". Alternatively, replace these words with "any of the following that that receives stormwater from, or take stormwater to, other infrastructure in the network" (the form of words used in cl 167(1)(f)). An alternative is to use the following definition taken from the Auckland Council Stormwater Bylaw 2015: **stormwater network** means a set of facilities and devices, either natural or built components, which are used to convey run off of stormwater from land, reduce the risk of flooding, and to improve water quality, and includes: (a) open drains and watercourses, overland flow paths, inlet structures, pipes and other conduits, manholes, chambers, traps, outlet structures, pumping stations, treatment structures and devices; (b) the public stormwater network; and (c) private stormwater systems.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	The definition of "stormwater service" in subcl (b) expressly "does not include a service relating to a transport corridor". This exclusion is presumably designed to prevent roads and other transport corridors being treated as part of the stormwater network notwithstanding that they serve stormwater functions. But roads are often some of the most significant overland flow paths in any district, and in a functional sense are part of the stormwater network. The meaning of the exclusion is unclear: is only stormwater infrastructure (such as a drain) located *within* a road or other transport corridor excluded, or would the exclusion also cover say a stormwater pond that was located adjacent to the corridor but still providing a service "relating" to the corridor?	Clarify definition of "stormwater service" to address the point raised.
	<u>Definition of 'wastewater services'</u> Subcl (b)(i) of the definition of "wastewater services" implies that the boundary of the service provision and therefore the wastewater network (defined by reference to the wastewater service) is the customer's property boundary. However, the point of supply for wastewater may be inside or outside that boundary. It is suggested that, as with "point of supply" for water in the Water Services Act 2021 (**WSA**), the wastewater services are defined as being provided to the point where the WSP's network connects to the customer's network, but without specifying what that point is. This leaves flexibility to determine that point in any particular situation. Each WSP could publish information as to the point of supply in its supply area in various scenarios. The definition is also circular because "wastewater services" is defined by reference to the "wastewater network" which in turn is defined by reference to the "wastewater service".	Define wastewater services as being provided to the point where the WSP's network connects to the customer's network, but without specifying what the point is.
Part 2 – Structural arrangements for providing water services		

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
Subpart 1 – Responsibility for providing water services *Territorial authority's responsibility*		
8 and 9	The Bill needs greater clarity about what a TA's residual responsibilities, if any, are once it enters into a transfer agreement. Cl 8(1) says the TA is responsible for "ensuring" that water services are provided in its district. Cl 8(2) says it may transfer responsibility for "providing" water services to a WO. In combination this suggests the TA may retain some responsibility for ensuring the services are (properly) provided by the transferee. Clause 9(1) is to similar effect because it says the TA must ensure that water services are provided in its district in one of the listed ways, including through a transfer agreement. Arguably, the requirement to ensure the water services are provided (which may mean properly provided) remains with the TA even if there is a transfer agreement. The purpose in cl 3(a)(i) refers to TAs' responsibility for the provision of water services, and the "different methods by which they can structure service provision arrangements", implicitly to satisfy that responsibility i.e. not necessarily to remove the responsibility entirely. The fact the WO becomes the WSP (cl 12(2)) is not necessarily inconsistent with this. However, cl 9(3) an (4) imply, without stating directly, that where there has been a transfer agreement the TA is no longer responsible for "ensuring the provision" of water services. The precise effect of a transfer of responsibility may influence the relationship between a TA and a WO transferee and the TA's ongoing obligations following transfer.	Provide a clear statement of a TA's responsibilities once it has entered into a transfer agreement i.e. that it no longer has responsibility for providing water services itself. Expressly state that the obligations in cl (4) do not apply where there is a transfer agreement under cl 9(1)(b), rather than leaving that implicit (because transfer agreements are not referred to in cl 9(3)). The TA must have a responsibility to select and implement a delivery model. But where it does that through entering into a transfer agreement, the TA's responsibilities should be simply those of a contracting party (i.e. to enforce the contract at its discretion), together with the general rights and obligations as the shareholder of a CCO under the Bill.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	The position should be clarified by stating that once a TA has entered into a transfer agreement it no longer has responsibility for providing water services itself, or ensuring the WO transferee provides those water services. The obligations on the WO to do so could however (and probably would) be a term in the transfer agreement.	
8 and 9 and the Bill more generally	The Bill is silent on its overall relationship with the LGA. This produces uncertainty and anomalies. For example, a TA which decides to provide water services directly will still be subject to the LGA including the purpose, role and principles in Part 2 of the LGA, and, except where there is an exception in the Bill, the decision-making requirements in Part 6. The same will presumably apply where a TA enters into a contract or arrangement (other than a transfer agreement) where it legally remains the WSP (refer cl 9(4)). However, WOs will not be subject to the LGA. For TAs who will continue to be subject to the LGA when providing water services, there is significant scope for uncertainty as to what legislation will apply in particular scenarios.	Make the Bill a code (to the exclusion of the LGA) in relation to the provision of water services by TAs, perhaps with specified exceptions (for example, s57 re appointment of directors, or s74 re LGOIMA).
9(1)(e)	This paragraph says one of the ways in which a TA must ensure water services are provided in its district is by "becoming a shareholder in a water organisation established by another territorial authority". This is inaccurate as simply becoming a shareholder does not ensure water services are provided – obviously more is needed than that. Further, this paragraph adds nothing to paragraph (b) which says that the obligation to ensure the provision of water services may be satisfied by a transfer agreement.	Delete cl 9(1)(e).

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	Becoming a shareholder in a WO established by another TA is not relevantly different from the TA establishing (and becoming a shareholder in) its own WO. In both cases the services are provided by the WO through a transfer agreement.	
Transfer of responsibilities to a water organisation		
11 and Schedule 2 (contents of transfer agreements)	Section 11(1) says that the section "applies to a territorial authority that intends to transfer responsibility for providing water services to a water organisation". It requires there to be a transfer agreement between the TA and the WO. The section does not provide for the possibility of a transfer agreement between a CCO that provides water services on the date the section comes into force (such as Wellington Water Ltd) and a new WO. There will be existing assets and liabilities of the CCO that are appropriately the subject of a such transfer agreement. There does not appear to be any way for the organisation that is being transferred the responsibilities to confirm that it accepts them. They just need to be transparent to the water org Board (cl12(1)(a)). The only exception seems to be liabilities, where clause 12(3) says that Schedule 9 of the LGA 2002 applies and that Schedule says that a territorial authority can only transfer liabilities with the agreement of the CCO. The risk is that the new organisation is given responsibilities it is unable to fulfil or that carry high risks. Clause 13 does let the new organisation have the right to agree to any changes. There should be some wording around disputes, or what happens if either party does not fulfil its side of the agreement. For example, dispute resolution procedures could be mandatory content for a transfer agreement under Schedule 2. Clause 11(2) could be read as implying there is only one transfer agreement possible under clause 11. The Councils anticipate that, given the scale of the re-	Add a new subclause (8) as follows: (8) Where a council-controlled organisation established before the commencement of this section is responsible for providing water services, and the shareholders of that organisation intend to transfer responsibility for providing water services to a new water organisation: (a) the council-controlled organisation and water organisation must enter into a transfer agreement; and (b) subsections (2), (4) and Schedule 2 apply to the council-controlled organisation as if all references to a territorial authority were references to a council-controlled organisation. Add new clause to Schedule 2 to make dispute resolution procedures mandatory content for a transfer agreement.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	organisation of water services, they may require more than one transfer agreement to transfer specified responsibilities to a new WO, outside the circumstances of clause 13 in which a new transfer agreement is required. We recommend a subclause 11(8) to say that nothing in clause 11(2) – which says that a TA must enter into a transfer agreement with a WO – prevents the TA and WO entering into more than one transfer agreement under this clause.	Insert a new clause 11(9) stating that nothing in clause 11(2) prevents the TA and WO entering into more than one transfer agreement under this clause.
11(3)	The distinction drawn here and elsewhere in the Bill (see comment on cl 9(1) above)) between WOs the TA has established and those in which it is a shareholder is unnecessary and unduly complicating. The relevant prerequisite in both cases is that the TA is a shareholder in the WO. The distinction *is* relevant in the context of the mechanisms by which the WO can be established or the TA can become a shareholder, but not once that WO is established or the TA's relationship with the WO from that point on.	Amend cl 11(3) by deleting paragraph (a) i.e. to simply provide that a TA may enter into a transfer agreement with a WO in which it is a shareholder.
11(5)	This subclause prohibits one territorial authority entering into a transfer agreement unless "all of them do". This fails to recognise that in practice, the different TAs establishing (or that are shareholders in) a WO will enter into transfer agreements sequentially, rather than all at the same time. As drafted, Council A (which decides first) will be precluded from entering into a transfer agreement because Councils B and C have not already done so.	Reword cl 11(5) to state that if more than one territorial authority is a shareholder in a WO, a transfer agreement entered into by one territorial authority has no effect until all TAs that are shareholders in the organisation have entered into a transfer agreement. Alternatively provide that one TA may not enter into the transfer agreement until all of them have *resolved* to do so. Once resolutions have been passed there is very high degree of certainty that the agreements will be entered into.
12	Clause 12 sets out the purpose and effect of a transfer agreement, which must contain the matters in Schedule 2 (cl 11(6). Those matters include (cl 3(g) of Schedule 2) contracts, including service agreements with any other person.	Include in cl 12 a provision equivalent to s 35 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 stating that relevant

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	There is nothing in the Bill which says that such transferred contracts etc will automatically apply to the WO in the same way as they did to the TA. Indeed, Schedule 9 of the LGA, which applies (see cl 12(3)), says that liabilities are not transferred except with the agreement of the other affected parties. In practice this means that contracts will not transfer without third party agreement because it is not feasible to transfer the benefit but not the liabilities associated with a contract. This will create difficulties, as the TA will remain contractually responsible for performance but will no longer have legal responsibility for the provision of the water services. The Bill must include a deeming provision which says any transferred contracts etc have the automatic effect of substituting the WO for the TA in that contract. This was the approach successfully used on Auckland reorganisation in 2009, which also involved the transfer of assets and functions to CCOs: see s 35 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009. See also the comment on cl 39 relating to the identification of the contracts etc which are transferred.	contracts, agreements and other arrangements of a TA or council-controlled organisation that, on the date the section comes into force, provides water services in the service area of a WO become contracts, agreements and arrangements of the WO. Exclude the application of cl 12(3) of Schedule 9 of the LGA.
13(1)	The clause covers the circumstances and process where a new transfer agreement is entered into. Clause 13(1) is limited to a transfer agreement with a WO which the TA *has established* i.e. it does not include the alternative scenario of a TA acquiring shares in an existing WO. This is another example of the unnecessary distinction referred to in the comment under cl 11(3). It is unclear why the situations in cl 13(1)(c) and (d) (ceasing to be a shareholder and disestablishing the WO) are qualified as "if applicable". Each of the options only applies if the relevant decision has been made. The language of a "further" WO in cl 13(1)(e) is odd.	Amend cl 13(1) to delete the reference to establishment and provide that it applies where a TA has entered into a transfer agreement with a WO. Delete "(if applicable)" in cls 13(1)(c) and (d). Amend "further" to "different" in cl 13(1)(e).

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
13(3)	This subclause requires a territorial authority to obtain the agreement of non-territorial authority shareholders before entering into certain types of agreement (in subcl (1)(c) and (d)). However, cl 13(2)(b)(ii) already requires there to be agreement with all shareholders on "all relevant matters". Clause 13(3) therefore duplicates 13(2)(b)(ii) and introduces uncertainty about the scope of the "relevant matters" in cl 13(2). As a matter of principle, it should be a requirement that all shareholders in the WO consent to any of the matters in cl 13(1) (and not just those in cl 13(1)(c) and (d)), as they may all significantly affect the WO and its viability. Clause 13(3) is also premised on cl 13(1) applying only when the WO has been established by the TA (see previous comment).	Delete cl 13(3). If cl 13(3) remains in some form, amend to refer simply to "other shareholders in a water organisation", rather than "shareholders in a water organisation other than the territorial that established it".
Water service providers		
15	The clause sets out the objectives of WSPs. However, there is no corresponding obligation on the WSP to meet those objectives, with or without qualifications. This can be compared the obligations on Watercare in s 57 of LGACA, which uses the term "must". It can also be compared to: • cl 16, which states that a WSP "must act in accordance with the following financial principles"; • cl 186, which states that a WO must "give effect to a statement of expectations provided by the shareholders of the water organisation". Accordingly, the cl 15 objectives are subordinated to both the cl 16 principles and shareholder expectations in the SOE. The objectives in cl 15 will have little impact on WSP decision-making without obligations on the WSPs which are linked to the objectives.	Amend cl 15(1) as follows: (1) ~~The objectives of a~~ A water service provider ~~are:~~ must exercise its functions, powers and duties in accordance with the following objectives:

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
15(1)	The objectives of water services set out in this clause are framed too narrowly. Clause 12 may be compared with s 15 of the now repealed Water Services Entities Act 2012 (**WSEA**), which included objectives to "protect and promote public health", "protect and promote the environment", and to "support and enable planning processes, growth, and housing and urban development". In particular: • The reference in cl 15(1)(a)(i) to providing "safe drinking water to consumers" would not encompass the provision of safe wastewater or stormwater services to consumers or protecting people from the risks of flooding through stormwater. It is anomalous that other objectives - for example the provision of a service which is reliable and of a quality that meets consumer expectations - apply to all water services, yet only the provision of *drinking water* needs to be "safe". Further, the current reference to providing to providing "safe drinking water to consumers" does not meaningfully add to the obligation that a WSP will have already under s 21 of the Water Services Act 2021, whereas a wider reference to providing "safe water services" would extend that obligation. • The objective in cl 15(1)(a)(ii) of providing water services that "do not have adverse effects on the environment" is unrealistic, because the provision of water services (for example, the abstraction of source water from rivers or aquifers) will always have *some* adverse environmental effects. A more realistic objective would be to provide water services in a way that "minimises (so far as practicable)" or "aims to minimise" adverse effects on the environment. Note that Greater Wellington supports the government's approach to achieve no adverse effects, as outlined in its own submission.	Amend cl 15(1) to include the identified omissions within the statutory objectives of WOs, in particular: • In cl 15(1)(a)(i), replace the words "drinking water" with "water services"; • In cl 15(1)(a)(ii) replace the words "do not have" with "in a way that minimises (so far as practicable)"; • Add a new cl 15(1)(a)(vii) as follows: support the housing growth, urban development and economic development objectives of the territorial authorities in its service area; and • Add a new cl 15(1)(c)(iii) as follows: in a way that partners and engages meaningfully with Māori in water services planning and implementation • Add a new cl 15(1)(f) as follows: to exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates • Add a new definition in cl 15(2) as follows:

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	• There is no reference in cl 15 to providing water services in a way that supports housing growth and urban development, contrary to the government's August 2024 policy announcements. The water services delivery plan prepared under s 8 of the Local Government (Water Services Preliminary Arrangements) Act 2024 (**Preliminary Arrangements Act**) must demonstrate a commitment to deliver water services in a way the supports the TA's housing growth and urban development, and not carrying that aim through into the WSP's objectives in the Bill is a significant omission (the delivery plan will have no ongoing life once the delivery arrangements are established). It is insufficient to leave "supporting housing growth and urban development" as a matter that shareholders of a WO can raise through the SOE or in its comments on the draft WSS. • There is no reference in cl 15 to partnering and engaging meaningfully with Māori – compare this to the operating principle in s 14(g) of the now repealed WSEA. Legislative recognition be given to the role of iwi as key regional stakeholders in water service planning and implementation. • While some wording from s 59 of the LGA 2002 relating to objectives of CCOs has been carried over, there is no reference to exhibiting a "sense of social and environmental responsibility by having regard to the interests of the community in which it operates" (cf s 59(1)(c) of the LGA; nor is "good employer" (referred to in cl 15(1)(e)) defined, unlike in s59(2) of the LGA.	**good employer** has the same meaning as in clause 36 of Schedule 7 of the Local Government Act 2002.
16	The financial principles for water services providers currently only refer to revenue and expenses but there is nothing about paying off debt. Clause 16(1)(a) could be interpreted as saying you can only spend revenue directly on the services and not on debt repayments.	Amend cl 16(1)(a) as follows (a) the provider must spend the revenue it receives from providing water services on providing <u>or funding</u> water services

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
		(including expenditure on maintenance, improvements, and providing for growth):
17(1)	This subclause states that a WSP that provides water services in its service area must continue to provide water services "in accordance with this Act" and "maintain its capacity to meet its obligations under this Act". This wording does not (but should) recognise a TA's power to transfer its responsibility for providing water services to a WO under cl 11. Nor does cl 17 cover the reverse scenario of a WO ceasing to provide water services because the TA wishes to resume responsibility itself or wishes the services to be provided by a different WO. Clause 17 is based on s 130 of the LGA, but the exceptions to the s 130 obligations in ss 131 to 137 (for example, in relation to closing down small water services) are not carried over. There should be the ability to close down small water services if the WSP obtains a mandate to do so from the affected community as provided for under the current LGA provisions.	Amend cl 17(1) to explicitly recognise the possibility of transfer of responsibility either to or from a WO as exceptions. Add equivalent provisions to ss 131 to 134 of the LGA in relation to closing down small water services.
17(2)	Clause 17(2)(c) refers to an obligation to comply "with subsection (3)". There is no cl 17(3).	Delete cl 17(2)(c) or add the intended cl 17(3) (subject to what that clause says).
Limitations on transfer agreements, contracts, and joint arrangements		
18	It is suggested that any transfer of ownership by a WO, even within the limits of cl 18, should be subject to the consent of all shareholders. The effect of such a transfer may be to fundamentally change the basis upon which the WO was established and received the infrastructure. The relationship between cl 18(3) and the terms of a transfer agreement is also unclear e.g. even if the transfer agreement purported to prevent further transfer of ownership this may not prevail over cl 18 which arguably gives a WSP a statutory	Provide that cl 18(3), in the case of a WO, is subject to the consent of all of the shareholders and the provisions of any relevant transfer agreement.

Hutt City Council

18 February 2025

Report no: HCC2025/1/59

Proposed Private District Plan Change 58: 12 Shaftesbury Grove, Stokes Valley - Rezoning to Medium Density Residential Activity Area

Purpose of Report

1. This report presents the recommended decisions of the hearing panel on Proposed Private District Plan Change 58: 12 Shaftesbury Grove, Stokes Valley – Rezoning to Medium Density Residential Activity Area.

Recommendations

That Council:

(1) receives the report and recommendation of the hearing panel dated 16 December 2024 for Proposed Private District Plan Change 58 (attached as Appendix 1 to this report);

(2) notes the process under the Resource Management Act 1991 for Proposed Private District Plan Change 58;

(3) adopts the recommended decisions on Proposed Private District Plan Change 58, and reasons for those decisions, set out in the hearing panel's report;

(4) approves Proposed Private District Plan Change 58 subject to the amendments recommended by the hearing panel, as recommended in section 8 of the hearing panel's report;

(5) resolves to publicly notify its decision on Proposed Private District Plan Change 58 within 10 working days of this decision, and to serve that decision on the applicant and submitters; and

(6) instructs staff to work with Wellington Water Limited and the requester for Proposed Private District Plan Change 58 to identify and implement a solution that will unlock the development potential of the site, as well as address the wider water supply issues facing the area.

Background

2. M & J Walsh Partnership Ltd ('the requester') lodged a private plan change request with Council on 12 September 2023. The purpose of the request was to rezone 12 Shaftesbury Grove (a 12.5 hectare site) from a combination of

the Hill Residential and the General Recreation Activity Areas to Medium Density Residential Activity Area.

3. At its 30 October 2023 meeting, Council resolved to accept the plan change request, and instructed officers to begin the plan change process as set out in Schedule 1 of the Resource Management Act 1991.

4. The proposal was publicly notified for submissions on 9 November 2023 as Proposed Private District Plan Change 58 (the Proposed Plan Change). Five submissions were received.

5. A summary of decisions requested in submissions was publicly notified on 8 February 2024, to provide for further submissions. Eight further submissions were received.

6. Council appointed a hearing panel to hear the application and submissions and make a recommendation to Council. That panel conducted a hearing on 23 September 2024, and has prepared a recommended decision for the proposed plan change (attached as Appendix 1 to this report).

7. The hearing panel's overall recommendation is:

> *8.1 In summary, we find that the proposed plan change is consistent with the purpose and principles of the RMA, and with the objectives and policies of the operative District Plan. In particular, we find that the management framework provided for under PC58 would enable residential urban development in line with the City's Urban Growth Strategy while effectively managing the adverse effects. The proposed zoning would appropriately align with the MDRAA residential zoning that applies to most of Stokes Valley, including the adjoining area to the north of the site. Significant indigenous biodiversity would be protected by avoiding or managing adverse effects from new subdivision and development.*
>
> *8.2 Based on our consideration of all the material before us, including the s42A report from the Council's consultants, the submissions, further submissions, evidence presented at the hearing and other relevant statutory matters, and for the reasons we have set out in sections 3 and 4 above, we recommend to the Council that:*
>
> > *a) Pursuant to clause 29(4) of Schedule 1, RMA, the Plan Change be approved, subject to the recommended amendments as outlined in Appendix 1 to this report;*
> >
> > *b) All submissions and the further submissions on the Plan Change be accepted or rejected to the extent that they correspond with our recommendations, as outlined in Appendix 2 to this report; and*
> >
> > *c) Pursuant to Clause 10 of Schedule 1 of the RMA, Council gives notice of its decision on submissions to PC58.*
>
> *8.3 Although not within the scope of the Plan Change, we separately recommend that the Council proactively works with Wellington Water and the Requester to identify and implement a solution that will unlock the*

development potential of the site, as well as address the wider water supply issues facing the area.

8. The amendments recommended by the panel (referred to in paragraph 8.2a of the panel's report) are:

    - A new policy for the protection significant ecological values at the site;
    - Additional information requirements for subdivision consent applications, in relation to:
        - A stormwater management plan,
        - A geotechnical assessment,
        - An ecological assessment,
        - A landscape management plan, and
        - An integrated transport assessment for any subdivision that exceeds the high trip generator thresholds (set in the Transport chapter of the District Plan);
    - Amendments to the matters Council would have discretion to when considering an application for subdivision of the site, in relation to:
        - Effects on the transport network, including impacts on on-street parking,
        - Effects on indigenous biodiversity; and
        - Geotechnical issues.

Options

9. The decisions before Council are:

    - To either adopt or reject the hearing panel's first recommendation to approve Proposed Private District Plan Change 58 subject to the panel's recommended amendments; and
    - How to acknowledge the hearing panel's recommendation (8.3 in the panel's report) on Council working with Wellington Water and the requester to identify and implement a solution that will unlock the development potential of the site, as well as address the wider water supply issues facing the area.

Adopting or rejecting the hearing panel's recommendation to approve the plan change subject to the panel's recommended amendments

10. If Council decides to adopt the recommendation to approve the plan change, the availability of the Council decision will be publicly notified in the Hutt News and on Council's website. At the same time a copy of the public notice and information about how to lodge an appeal will be served on the applicant and all submitters, in accordance with clause 29(6) of Schedule 1 to the Resource Management Act 1991.

11. Any person who has made a submission on the proposed plan change, and the requestor, has the right to appeal to the Environment Court in respect of the provisions included or excluded in the proposal, or the provisions the Council's decision proposed to include or exclude in the plan change.

12. The right of appeal of submitters is limited to matters raised in their submission.

13. Council does not have the option of making changes to the hearing panel's recommendation because Council has not heard the evidence presented at the hearing and to change the recommendation would not demonstrate fairness or natural justice to the plan change requestor and to submitters.

14. If Council decides to reject the recommendation to approve the plan change, the process would need to return to at least the hearing stage. All submitters and the requestor of the proposed plan change would need to be re-heard, either by the same hearing panel or by a newly appointed panel. The panel would then present a new (and possibly unchanged) recommendation to Council to again make this decision to accept or reject. This would cause additional costs and time delays.

15. If no appeals on the plan change are received, no further action on Council's part is required. The District Plan will be amended as set out in the plan change request and the hearing panel's recommendation.

16. If one or more appeals are received, Council will need to defend its decision in the Environment Court.

Relevance of this proposed change for the Proposed District Plan

17. The Council notified a new Proposed District Plan on 6 February 2025. Under the Proposed District Plan, 12 Shaftesbury Grove would be in the Large Lot Residential Zone.

18. While Council could have attempted to pre-empt the recommendations of the hearing panel for this site by zoning the site as Medium Density Residential Zone in the Proposed District Plan, the advice of officers was that it would be more appropriate to allow the process for the Proposed Plan Change to run its course, as the outcomes of the Proposed Plan Change could be incorporated into the Proposed District Plan process at a later date (ideally through a submission on the Proposed District Plan as this would be the most straight forward and cost-effective method, but alternatively through a formal variation to the Proposed District Plan).

19. This is still the opinion of officers, and with the Council's decision on the Proposed Plan Change, officers will continue to consider the most appropriate way to incorporate the outcomes of the Proposed Plan Change into the Proposed District Plan process.

Recommendation on Council working with Wellington Water and the requester regarding a solution to unlock development potential and address wider water supply issues in the area

20. In section 8.3 of their report, the hearing panel recommends that "the Council proactively works with Wellington Water and the requester to identify and implement a solution that will unlock the development potential of the site, as well as address the wider water supply issues facing the area" (while acknowledging that this is not with the scope of the Proposed Plan Change).

21. This recommendation is in response to evidence presented to the panel on water supply issues for the site and wider area, which constrains development. The issue is primarily discussed in paragraphs 5.38 to 5.43 of the hearing panel's report.

22. In short, the panel found that while they do not consider the water supply issue to be a reason to amend or reject the Proposed Plan Change, but that the Council has an obligation to proactively and constructively achieve a long-term solution to the water supply issue.

23. The Council's Long Term Plan does not currently include funding for a solution to this issue.

Climate Change Impact and Considerations

24. Climate change impact has been considered by the hearing panel in making its recommendation to the extent relevant under the Resource Management Act.

Consultation

25. Full public notification, a submissions process, and a public hearing were conducted in the processing of the plan change as required by the Resource Management Act 1991, which has specific requirements about the public engagement involved with private plan change proposals.

Legal Considerations

26. All legal considerations under the Resource Management Act 1991 have been taken into account and processes have so far been carried out in accordance with the Act.

Financial Considerations

27. The costs with processing the Proposed Plan Change are passed on to the applicant in accordance with the provisions of the Resource Management Act 1991 and Council policy.

28. There would be costs to Council and additional cost to the requester and submitters if the decision is appealed.

29. If Council decided not to adopt the recommendation of the hearing panel to approve the plan change, there would be significant extra cost to Council, the requester, and submitters associated with repeating all or parts of the plan change process.

30. With regard to the recommendation on Council working with Wellington Water and the requester on a solution to water supply issues, there is a cost associated with this work for all parties involved. For Council, this would include costs associated with Council officers time associated with this work, but also potentially substantial costs associated with implementing any solutions that come out of that work as these solutions would likely involve substantial investment in new infrastructure. Without knowing what those solutions are, it is unclear what those costs would be, and what share of those costs would fall on Council.

Appendices

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Author: Nathan Geard
Policy Planning Manager

Reviewed By: Tim Johnstone
Head of Planning

Approved By: Alison Geddes
Director Environment and Sustainability