

WORKSHOP MATERIAL

Date of Release: 27 April 2023

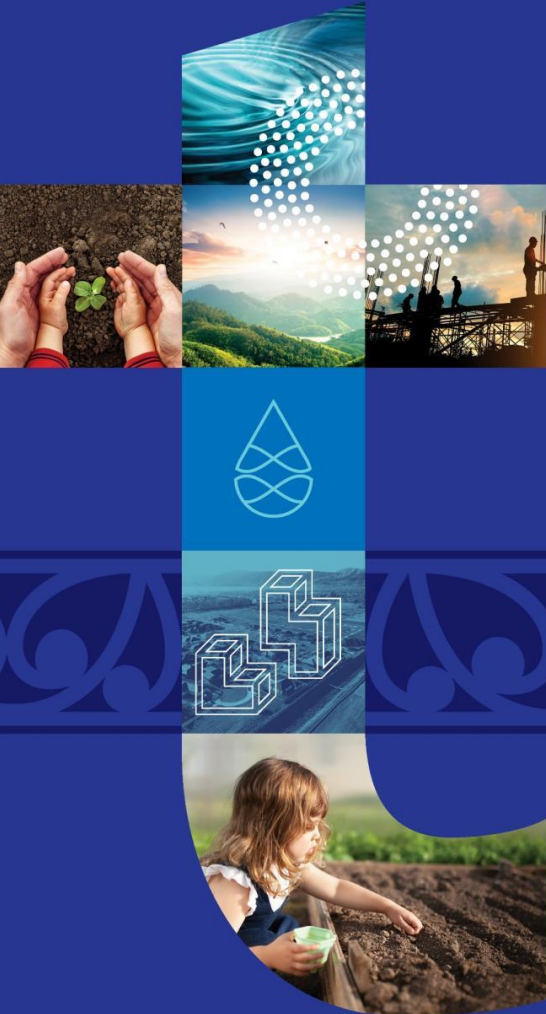
Workshop: Three Waters Workshop Submissions

Date: Wednesday, 8 February 2023

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Water Services Entities Legislation - Background

Presentation 1 : 8 February 2023



Thriving and resilient Tasman communities

Purpose of this Presentation

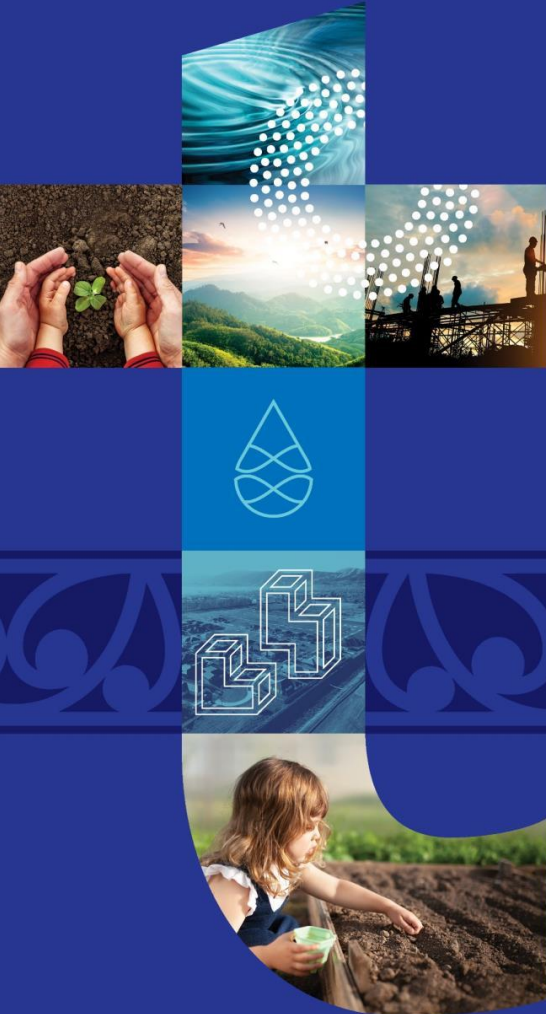
- Update on Changes to Water Services Entities Act(WSEA)
- Background Outline of New **Water Services Legislation Bill (WSLB)**
- Background Outline of New **Water Services Economic Efficiency and Consumer Protection Bill (WSEECPB)**
- Next steps



Three-part Water Services Entities Legislation

- 1. The Water Services Entities Act 2022** – came into force on 14 December 2022
 - establishes 4 entities to deliver safe, clean and affordable drinking water, wastewater and stormwater services
 - Tasman remains part of Entity C
 - sets out ownership, governance and accountability of Water Services Entities (WSEs)
- 2. Water Services Legislation Bill (WSLB)**
 - amends the Water Services Entities Act (WSEA) and other Acts, including LGA 2002
 - sets out more detail around function, powers, obligations and oversight arrangements
 - currently with Finance and Expenditure Select Committee – seeking submissions by 17 Feb
- 3. Water Services Economic Efficiency and Consumer Protection Bill (WSEECPB)**
 - regulates price and quality of water infrastructure services – what and how WSEs charge for their services
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Part 1 – Water Services Entities Act (WSEA)



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WSEA

- Largely remains the same as the Water Services Entities Bill – some positive changes in governance and accountability of entities
- Addition of two objectives:
 - supporting planning process and growth,
 - delivering services in a manner that mitigates climate change and enables adaptation

WSEA

New principles

- socially responsible procurement, buying local
- Whole of catchment approach to service delivery - including risk and hazard management

Additions also include:

- Courts able to issue enforcement orders to ensure quality standards are met
- Entities must have a customer complaints and dispute resolution processes in place, approved by the Minister

Regional Representative Group

- Regional Representative Groups (RRG) appoint Water Services Entity (WSE) board and Regional Advisory Panels, and sets overall performance expectations
- Link Councils and iwi/Mana whenua and WSE
- Minimum number of members (12) but no maximum
- Appointments must allow for 'equitable and reasonable' representation of range of territorials (metro, provincial, local)

Regional Advisory Panel

Regional Advisory Panels (RAPs):

- provide advice on exercising powers and duties
- must be consulted on key strategy documents eg Activity Management Plans (AMPs)
- Members can represent their individual focus area but overall must exercise role for entire Entity area

Entity Boards

- Skillsets required for whole board includes Network Infrastructure, Public Health, Environment
- Appointment and training policies must be reviewed and publicly available
- Meetings made public, covered by LGOIMA

Accountability - Government Policy Statements

- Areas Government can give policy direction on:
 - planning processes and growth
 - local procurement – ‘buy local’
 - joint arrangements between WSEs
- WSE must do Statement of Intent, Infrastructure Strategy - audited
- WSE Infrastructure Strategy similar to current
- WSE must engage with Local Authorities on Infrastructure Strategy, AMPs, funding plan, and transition

Planning Processes

- 2024 LTPs to exclude 'Water Services'
- WSE planning, priorities, and delivery need to include:
 - Giving effect to Te Mana o te Wai
 - Supporting growth, development and housing
 - Protecting and enhancing environment
 - Improving infrastructure resilience, adapting to climate change

Te Mana o te Wai

- WSEs must include Te Mana o te Wai (TMOTW) statement (provided by iwi) within Statement of Intent
- Must prepare pathway to implementation of TMOTW within 2 years, including training/ skills development
- Must monitor performance against TMOTW statements
- Government to identify TMOTW inconsistencies across reforms, and cross-agency collaboration

Urban Growth, development and housing

- WSEs to participate and align planning with RMA/NBA/SPA process via involvement in:
 - Regional planning committees
 - Private plan changes
 - Existing relationships

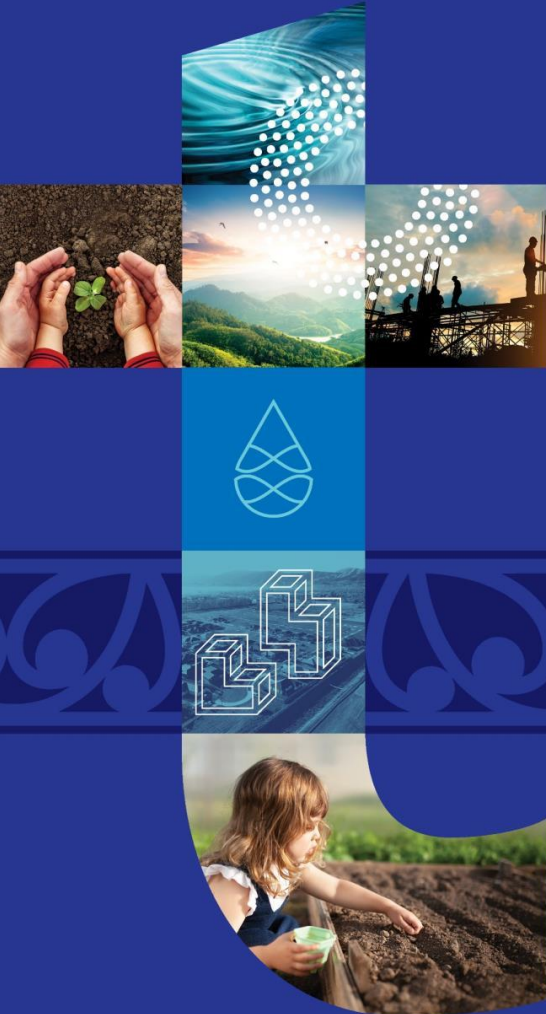
Environment, Climate Change and Resilience

- WSEs required to:
 - develop pathways to long term environmental compliance and provide innovation in service delivery
 - measure and monitor environmental impact and costs to achieve outcomes
 - collaborate with Ministry for Environment (MfE) and Infrastructure Commission on guidelines for improving resilience
 - infrastructure plans must give effect mitigating climate change

Key Changes from WSE Bill to WSE Act

- Largely the same, some positive additions to support: planning for growth, adapting to climate change, buying local, environmental compliance
- RRGs can now have fair representation of member Councils – min 12 members, no maximum number of members
- Entities must have customer complaints and disputes resolution systems
- Te mana o te Wai requirements expanded
- Government can direct WSEs via Policy Statements

Part 2 – Water Services Legislation Bill



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Water Services Legislation Bill (WSLB)

- Amends:
 1. the Water Services Entities Act (WSEA)
 2. numerous other Acts (~20) including LGA 2002
- Contains technical details of WSE duties around functions, powers, obligations and oversight arrangements
- Expansion of regulatory functions the WSE is expected to deliver on – rule making replaces bylaws and other local authority powers

Te Mana o te Wai

- WSE plan to include:
 - how WSE will respond to TMOTW statement
 - how the plan is consistent with provisions of Te Tiriti o Waitangi/The Treaty of Waitangi

Drinking Water Catchment Areas

- WSE Can designate any geographical area or groundwater catchment as a Controlled Catchment Area (CCA)
- Designation requires landowner agreement
- All CCAs require a management plan
- WSE regulates activity on the CCA based on the plan
- Plan needs to give effect to NES Freshwater

Stormwater Management Plans

- WSE must prepare Stormwater Management Plans (SMPs) – overlap with Council Stormwater Catchment Management Plans is unclear – potential for duplication/ inconsistencies
- SMP link Infrastructure Strategy and AMP
- WSE can make stormwater network rules – must engage on these with Council, Road Corridor Managers
- WSE must give effect to Network Environmental Performance Standards (Taumata Arowai are yet to determine these for stormwater)

Trade Waste

- WSEs must prepare Trade Waste Plans (TWP)
- TWPs replace trade waste bylaws
- WSE must engage on these
- Process for issuing Trade Waste permits similar to existing process

Powers of Access to Undertake Work

- Powers of access are similar to Local Authority:
 - 15 days notice and property owner consent or
 - District Court order
- Specific provisions apply in certain instances on Māori land
- Can access road network
- Powers to take immediate action in emergencies or urgent circumstances

Rural Water Supplies

- Small mixed use water supply is where:
 - At least 85% of water used for agriculture or horticulture and
 - 1000 or fewer dwellings(not farmland dwellings) on scheme for domestic purposes
- Can be transferred if meets criteria, to alternative owner/operator with a viable proposal, and at least 75% approval of voters from the service area

Water Services Assessments

- WSE must undertake assessments of what 3 Water services are available to each community and population within its service area
- Similar to LGA Water and Sanitary Services Assessment (WASSA)
- Requires Regional Representation Group input
- Councils are required to undertake remainder of services formerly covered by WASSA; eg Cemeteries and Crematoria, Public Conveniences, Solid Waste

Service Agreements and Rule-making

- WSE can make rules to regulate behaviour:
 - restricting water use
 - regulating wastage, discharges
 - notifying risks or significant change of supply
- WSEs do not have powers to make bylaws, rules are enforced through service agreements – legislation revokes bylaws
- WSE must have a service agreement with consumer liable for paying charges

Agreements are 'deemed' or 'implied' – *not set out clearly how agreements will be entered into*

WSE Relationships with Council

- WSEs need agreements with Councils, iwi, Road Controlling Management
- Agreements must include:
 - how information is shared
 - agreed levels of service
 - levels of engagement – assessments, with RMA/NBA process

Council needs to provide WSEs access to Rating Information Database

Compliance and Enforcement

- WSE must have Director of Compliance and Enforcement
- The director appoints enforcement officers
- WSE to have a Compliance and Enforcement Strategy – 3 year duration
- The strategy may be similar to Taumata Arowai enforcement strategy

Charging

- WSE can charge properties for stormwater service within a defined area, within 100m of network
- Prior to 1 July 2027, WSE can charge Council
- From 1 July 2027, WSE can charge based on Capital Value
- Charge may include capital costs, environmental compliance costs
- No cap on charges

Charging

- WSEs can require Councils to collect charges up to 1 July 2029
Council considers separate invoicing systems are required
Reimbursement of invoicing system set-up cost is unclear
- Information to support charging must be supplied by Council to WSEs 'at reasonable cost'
- WSEs to consider a set of charging principles when setting charges
- Bill empowers geographical averaging – likely after an initial period – affordability a fundamental principle of water reforms
- Government may introduce a policy geographical averaging from 1 July 2027, address historical service inequities

Charging principles

- Costs of providing the service should be reflected in the charges
- Charging information should be transparent and simple for consumers to understand
- WSE can charge groups differently only if level or type of service is different or costs of providing service differs
- Infrastructure Contributions – similar to Development Contributions under LGA
- No equivalent to Financial Contributions under RMA

Other points to note

- Crown exempt from water service Infrastructure Contributions (ICs)
Existing consumer protections currently under DCs (refunds, objections, reconsiderations) are not present in ICs
- WSE not rateable for all assets passing under land they do not own –
potentially reduces income for Council
- Councils can defer any water services bylaw reviews that are due before 1 July 2024
- Councils must provide a list of any water services bylaws
- Council Infrastructure and Financial strategy disclosures only mandatory for Roads/Footpaths and Flood protection/River control

Summarising WSLB

- Technical details of functions, powers to make rules –replacing bylaws
- WSE Can designate drinking water catchment areas, and transfer rural schemes that qualify to alternative owners –concern if these fail
- Must undertake 3 Waters services assessments, prepare Trade Waste and Stormwater Management Plans and adhere to environmental standards
- Need service level agreements in place with consumers
- Can charge for stormwater services, and may require Councils to collect 3 Waters charges on their behalf – potential impacts for Council
- Need engagement agreements in place with Council and other organisations

Part 3 – Water Services Economic Efficiency and Consumer Protection Bill



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Economic Efficiency and Consumer Protection Bill (WSEECPB)

- Economic regulation :
 - focus on pricing controls to avoid significant or sudden price shifts
 - rules that control who can lead the business and what prices can be charged
- Consumer protection:
 - rules and regulations to safeguard rights of consumers and protect consumers from unfair practices

The Need to Regulate

- WSEs need regulation – single provider in non-competitive market
- Risks of sole provider:
 - low quality of service – not meeting community expectations
 - lack of ongoing investment in infrastructure in the long term
 - efficiencies in pricing, lack of transparency

The Regulator

- Commerce Commission is responsible for regulating under this Bill/Act
- Commerce Commission's role is monitoring whether outcomes in the water services markets are consistent with outcomes in competitive markets
- Water Services Commissioner will be appointed from Commerce Commission
- Scope of regulation includes drinking water, wastewater, stormwater

The Regulator role

- Commerce Commission will have powers to enable information disclosure, to promote transparency
- Commission's power includes setting quality standards to enable quality regulation
- Regulating price-quality – setting both network quality standards and pricing
- Similar powers to regulation of energy and telecoms sectors

The Water Services Act, Taumata Arowai Act, Regional Councils also regulate quality – need alignment with other water legislation to avoid inconsistencies

Regulatory timeframe

- 1 July 2024 – WSE in operation, WSLB pricing principles
- 1 July 2027 – first regulatory period commences. Information disclosure and quality regulation available
- 1 July 2030 – second regulatory period
Price/quality regulation available, this period can last 6 years
- Commission can defer implementation dates

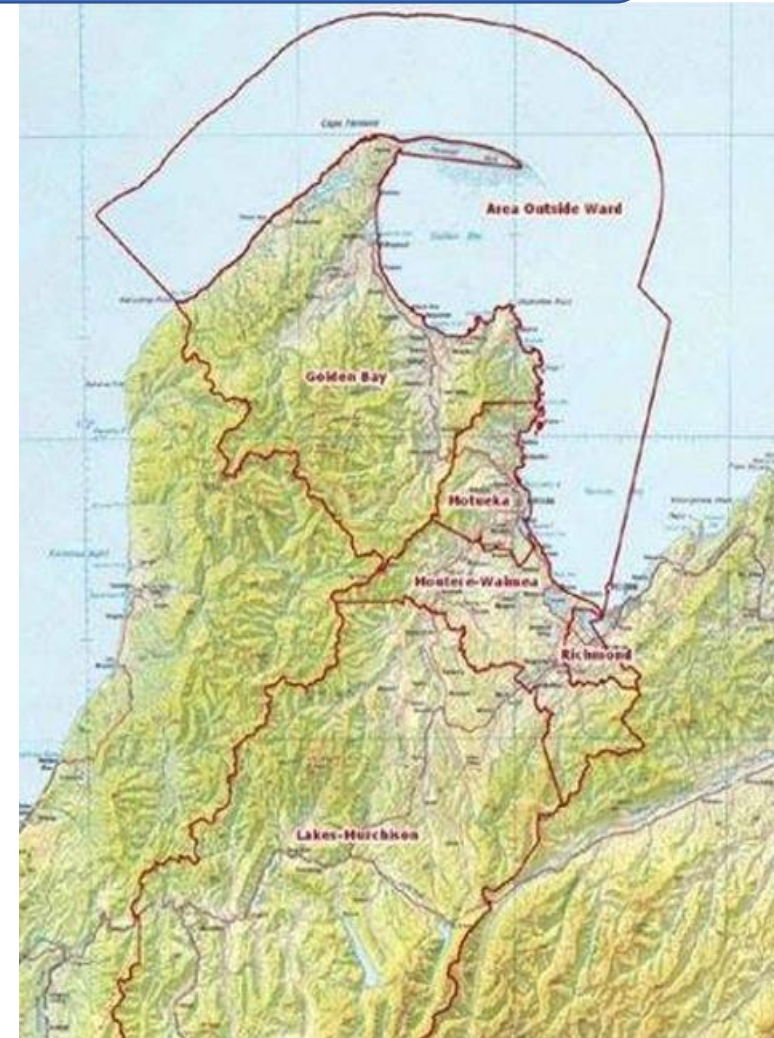
Summary of WSEECB Bill

- Regulation of WSEECB Bill is responsibility of Commerce Commission
- Pricing is non-competitive and price-quality regulation is needed to ensure costs and practices are fair and transparent
- Commissioner can set quality standards and regulate pricing (Water Services Act regulates quality so needs to align) – potential for duplication/inconsistencies in quality standards

Draft submission

Staff are preparing a draft submission, informed by:

- Council and Staff review, comments and input
- LGNZ, Taituara/SOLGM, iwi feedback
- Refer Presentation 2 – Council Submission



Next steps

Drafting the submission

- Incorporate comments
- Circulate for final review 13 February
- CE/Mayoral signoff 16 February
- Submit to the Panel by 17 February
- Provide the final submission via the CE's Report at the 23 March Full Council Meeting

Finance Committee Review

- The Committee will review submissions
- Final report due with the Minister in June 2023
- No requirement for the Minister to act on the report

Water Services Legislation - Council Submission

Presentation 2: Submission on Bills 2 & 3
February 2023

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Purpose of this Presentation

- Briefly Outline Water Services Entities Act(WSEA)
- Briefly Outline New Water Services Legislation Bill (WSLB)
- Briefly Outline New Water Services Economic Efficiency and Consumer Protection Bill (WSEECPB)
- Discuss and receive feedback on potential points for Council submission
- Next steps



Three-part Water Services Entities Legislation

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1. Key Changes from WSE Bill to WSE Act

- Largely the same, some positive additions to support planning for growth, adapting to climate change, buying local, environmental compliance
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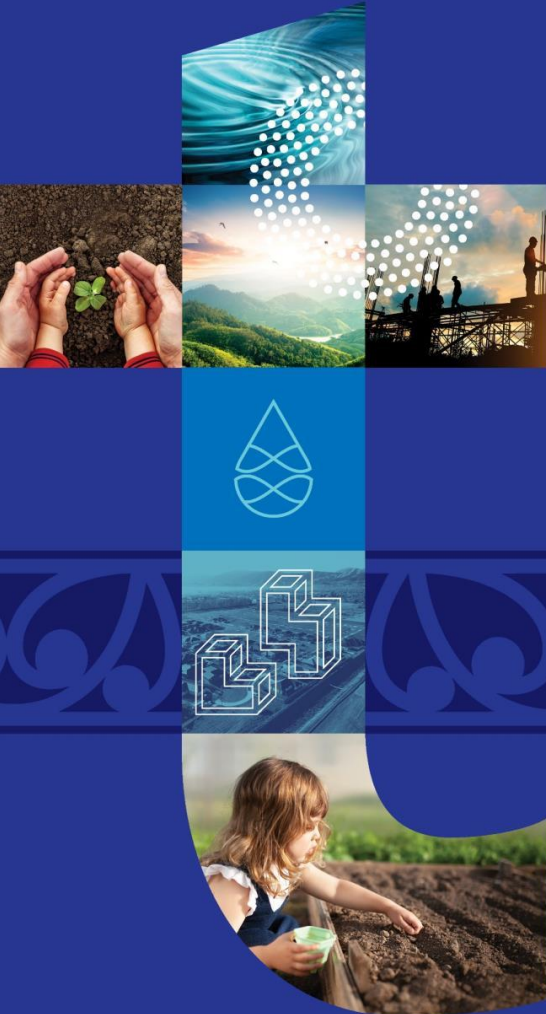
2. Water Services Legislation Bill

- Includes technical details of WSE functions, powers to make rules –(WSE rules replace 3 waters bylaws)
- WSE can designate drinking water catchment areas, and transfer rural schemes that qualify to alternative owners – concern if these fail
- WSE must undertake 3 Waters services assessments, prepare Trade Waste and Stormwater Management Plans and adhere to quality and environmental compliance standards
- Need service level agreements in place with consumers
- Can charge for stormwater services, and may require Councils to collect 3 Waters charges on their behalf – potential impacts for Council
- Need engagement agreements in place with Council and other organisations

3. Water Services Economic Efficiency & Consumer Protection Bill (WSEECPB)

- Regulation of the WSEECPB is responsibility of Commerce Commission
- Pricing is non-competitive and price-quality regulation is needed to ensure costs and practices are fair and transparent
- Commissioner can set quality standards and regulate pricing to avoid significant or sudden price shifts

Potential Submission Points



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1. Consistency Across Water Services Legislation

The WSL Bill and WSEs' rules, plans and quality requirements, and standards need to align with requirements and definitions under other existing water legislation including:

- Taumata Arowai Water Services Regulator Act 2020
- Water Services Act 2021
- RMA – resource consent requirements

If not aligned, there is risk of duplication, inconsistencies resulting in inefficiency and additional costs

e.g. Alignment across quality standards, Stormwater Catchment Management Plans, Source Water Risk Management Plans, RMA reforms

Recommend closer alignment of requirements under WSL Bill and WSE rules with existing Water Services Legislation

2. Clarity in Regulatory Functions across Regulating Organisations

Regulation, Compliance and enforcement responsibilities are being spread across multiple regulatory organisations including:

- the WSEs, Taumata Arowai, Regional/Unitary Councils, Commerce Commission

Consenting framework will be regionally based – regulated by Regional/Unitary Authorities - there will be regional variations – potential for variations in practice throughout a service entity area

Greater definition of roles and limitations, of various regulatory bodies will reduce potential for inconsistencies, duplication, inefficiency and unnecessary additional costs

Recommend greater definition of roles and limitations, of various regulatory bodies and closer alignment of requirements under WSL Bill and WSE rules

3. On-Charging on Behalf of WSE

Concerns for Council invoicing on behalf of WSEs –around resourcing and system limitations – Council will need separate billing systems, for 2 WSEs

- Concern is that without significant communications on changes to service provider and billing form WSEs, consumers will be confused and still consider Council the service provider – and a risk to Council reputation if transition is not smooth

Recommend WSEs develop comprehensive communication programme prior to 1 July 2024

- WSE can invoice Council for services and Council must recover costs from consumer; there is risk of misalignment – Council no longer has 3 Waters income to cover potential shortfalls

Recommend a shared billing agency set up by WSEs or initially between Councils to efficiently deliver the billing function separately from Council's normal billing system

4. WSE Service Agreements with Consumer

WSE Service Agreements with Consumer will not be entered into individually

- It is not clear how WSE Service (deemed) agreements with the consumer are entered into when legislation comes into force

Recommend that greater clarity is provided around how WSE service agreements with consumer are communicated and entered into

5. Collaboration and Engagement Agreements

Concerns of Council around how effective WSE collaboration and engagement is measured including future servicing planning

- Engagement agreements will be crucial to enable Councils to meet their requirements under RMA, NPS on urban development, to enable growth, housing development, Future Development Strategies

Recommend Ministerial Reviews should also include some requirement to consider how effectively WSEs are engaging/collaborating with territorial authorities

6. Development contributions(DCs) vs Infrastructure Contributions(ICs)

Some of the characteristics of DCs are carried over to ICs but not all

- Existing consumer protections currently under DCs (refunds, objections, reconsiderations) are not present in ICs
- It is unclear if Council remains liable for outstanding refunds

Recommend ICs include similar protection provisions, and liability for refunds pass to WSE

7. Management of stormwater functions

Management of stormwater functions and key responsibilities is spread across multiple agencies

-More emphasis required on key responsibilities for each agency, how they should work together for holistic catchment based stormwater management

Recommend a separate clause be added requiring TAs, Regional Councils and Transport Corridor Managers to implement and comply with the Stormwater Management Plans (SMPs) that they are required to develop together with the WSE.

- SMPs should also be considered in the development of Activity Management Plans and Infrastructure Strategy

- Clarification needed on how existing (global) discharge consents will be transferred considering that these consents apply to all stormwater assets including those that won't transfer to the WSE; e.g. overland flow paths, reserves, streams and waterways.

8. Stormwater discharge requirements for Road Network Manager

New stormwater network rules have potentially significant implications (financially and spatially) for Council as the Transport Corridor Manager

- Stormwater Network Rules will help achieve better stormwater outcomes but the implications on Council as the Transport Corridor Manager need to be clarified

Recommend seeking clarification of potential stormwater network receiving requirements for Road Corridor Management

- Stormwater Network Rules may apply to public networks that Council keeps ownership of, provided that Council *agreed* to the rules in writing.

The practicality of this clause in terms of achieving better stormwater outcomes needs to be clarified as well as powers of the WSE/Commissioner to enforce these.

9. Stormwater cost implications for Road Network Manager

Road stormwater discharge – agreement with RCA

WSE can set stormwater network rules that will affect Council as the transport corridor manager around volume and quality of discharges into the WSE network as well as works on or near overland flow paths

- increased capex and opex to implement and maintain stormwater quality and quantity controls within the roading network
- Space constraints within the road reserve due to need to incorporate stormwater quantity and quality controls
- Limitations on what work can be done in road reserves if these affect overland flow paths.

10. Stormwater Management Planning

WSE is required to develop Stormwater Management Plans in collaboration with other relevant agencies and iwi

- SMPs need to be provided to Taumata Arowai no earlier than 1 July 2028. The clause should clarify how stormwater is managed in the years before a Final SMP is adopted. It is also noted that there is no end date by which plans have to be submitted to Taumata Arowai.

Recommend clause amended to clarify responsibilities for stormwater management prior to 1 July 2028, and date by which SMPs are required to be finalised.

- To avoid doubling up on plans, clarification is required on how SMPs should relate to existing legislated stormwater management plans such as Catchment Management Plans, required by global stormwater discharge consents.

Recommend SWPs are required to align with Catchment Management Plans

11. Rural Water Supplies

- Small mixed use water supply is where:
 - At least 85% of water used for agriculture or horticulture and
 - 1000 or fewer dwellings (not farmland dwellings) on scheme for domestic purposes
- Can be transferred if meets criteria, to alternative owner/operator with a viable proposal, and at least 75% approval of voters from the service area
- Concern that WSE will see this as an opportunity to divest less small rural water schemes and they prove non-viable in longer term – risk associated with small water schemes not meeting compliance standards are a key driver for reforms

Recommend clarity is provided around what/if any mechanisms are in place if transferred water schemes prove non-viable/non-compliant in long term

In Support of others

We have provided input and in general we are in support of the submissions on the Water Services Bills by:

- Water New Zealand
- Local Government New Zealand
- Taituarā – Local Government Professionals Aotearoa

Other Potential points for submission

- Other thoughts...?

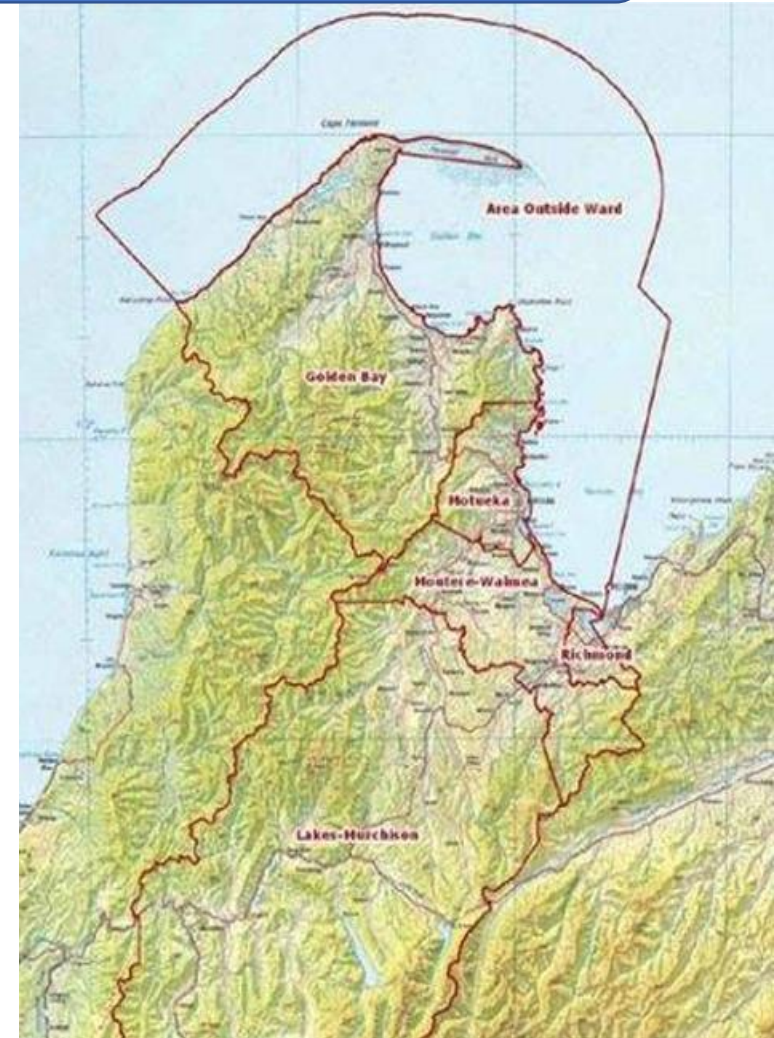
Draft submission

Staff are preparing a draft submission, informed by:

- Councillor and Staff review, comments and input
- LGNZ, Taituara/SOLGM, iwi feedback

We are seeking your thoughts:

- Is there anything specific you want us to highlight/emphasize?
- Is there anything you think we have not covered?



Next steps

Drafting the submission

- Incorporate comments
- Circulate for final review 13 February
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Patai?

Any other questions..?

Thank you for your participation.