



7 February 2023

Chair  
Finance and Expenditure Committee  
Parliament Buildings  
WELLINGTON

Dear Chair

## **WATER SERVICES LEGISLATION BILL**

New Plymouth District Council (NPDC) opposes the Water Services Legislation Bill. NPDC submitted against the Water Services Entities Bill (now Act) to the Finance and Expenditure Committee, and continues to oppose the Three Waters Reforms. Our submission to you outlined our opposition on the basis that:

- Non-structural regulatory interventions to achieve improved water services have not been attempted first
- Councils, including NPDC, are already tackling the challenges to improve water services
- The Reforms represent a significant centralisation of community assets, particularly through the Government Policy Statement
- Stormwater services should not be delivered separately from roading and parks service delivery given their interfaces, and
- There is no guarantee that any particular community will receive investment.

We recommend that the Committee reconsider these aspects and our previous submission in reviewing this Bill.

NPDC accepts that the Water Services Entities Act is now law. We have not undertaken an extensive review of the Bill as sector organisations (LGNZ, Taitaura and Water New Zealand) will provide detailed submissions to you. However, we have significant concerns around the charging arrangements between the water services entities (WSE) and territorial authorities that we recommend you amend.

NPDC does not wish to make an oral submission in support of this submission.

### ***Ensuring WSE fully fund their activities through rating activities***

Clause 22, new section 342 provides that the WSE will not be liable for rates for pipes and assets on land they do not own, and clause 137 appears to make WSE not liable for rates on land they own (within their service area). This runs counter to the notion that WSE will be fully funding their activities and acts as a subsidy from the rest of the community to the WSE including from those that do not receive water services. It also sets a significant precedent for other utility providers to seek exemptions from paying rates. Pipes, assets and land, regardless of location, will create and incur costs for local authorities that should be accounted for through rates and there is no justification for why WSE should be exempt from paying rates.

We also note that territorial authorities will need to provide its rating information database to the WSE under clause 22, new section 319. However, WSE are not required to pay the costs associated with this database, including the cost of the district valuation roll. WSE will be required to use the capital value of a property in charging for stormwater services under clause 22, new section 340, so it is appropriate that they contribute towards the costs of the district valuation roll. Excluding the WSE from these costs again runs counter to the notion that the WSE will fully fund their activities.

**NPDC recommends that the Committee ensure that WSE fully fund their activities by:**

- **Removing clause 22 new section 342 and clause 137 so that WSE be liable for rates for pipes and assets regardless of the land owner or location, and**
- **Amending section 43 of the Rating Valuations Act 1998 so that the WSE contribute fairly to the costs of the district valuation roll**

### ***Transitional charging arrangements***

We have significant concerns with the transitional charging arrangements set out in the Bill.

First, new sections 336-338 provide that local authorities may collect (and effectively be required to do so) charges on behalf of the water services entities through to 1 July 2029. However, there is no provision in the Local Government (Rating) Act 2002 for local authorities to include WSE charges in a rates bill. This means that each local authority will need to separately invoice each property with WSE charges for these five years.

NPDC does not currently have systems and resources in place that would support the separate billing process required to charge and collect WSE charges separately. A significant investment in technology and resource would be required, solely to facilitate these arrangements. Those systems and staff would then be redundant at the end of the transition period. It would be significantly simpler for the Bill to include consequential amendments to the Local Government (Rating) Act 2002 to provide that these transitional WSE charges can be treated as rates.

Second, the Bill provides for a five-year period for this arrangement. However, a number of other provisions in the Bill provide an end of charging stability after a three-year period:

- Clause 13(2) provides that geographic averaging of pricing can be required by the Government Policy Statement from 1 July 2027.
- Clause 22, new section 331(5) provides new charging principles that come into force on 1 July 2027 (at the latest).
- Clause 22, new section 340 provides requirements for stormwater charging that come into force from 1 July 2027 (at the latest).
- Clause 22, new section 475 provide for regulations that, from 1 July 2027, set the maximum proportion of revenues that can come from volumetric charges.
- Schedule 1, new clause 61, Part 2, Schedule 1 provides that water service entities may adopt the existing tariff and charging structure from territorial authorities until 1 July 2027 (at the latest).
- Schedule 1, new clause 63, Part 2, Schedule 1 provides that WSE may bill territorial authorities from stormwater services until 1 July 2027.

NPDC therefore expects that, from 1 July 2027, the charging regime for water will likely be significantly different from that originally set by territorial authorities. This would appear to be a more appropriate timeframe to transfer responsibility for charging to WSE than 1 July 2029 as currently in the Bill. This would mean that local authorities are not responsible for significantly altering charges and creates a clearer line of accountability for the new charging regime post-1 July 2027. A three-year period is more than sufficient for WSE to establish billing processes and systems. The three clauses above which enable changes before 1 July 2027 should have the ability to change earlier removed to provide greater certainty.

Third, NPDC also disagrees with the transitional provision in new clause 63 of Schedule 1 that enables WSE to bill territorial authorities for stormwater services through to 1 July 2027 instead of consumers. Territorial authorities will have to account for this charging in their LTP and then in the rating system. NPDC accepts that an alternative transitional arrangement for stormwater services is required as many territorial authorities (including NPDC) charge for stormwater services through the general rate. However, charging territorial authorities who will, in turn, rate the community is inefficient and mixes accountability. It goes against the premise that WSE can stand on their own feet and, as the Department of Internal Affairs notes in its [Regulatory Impact Analysis \(paragraph 157\)](#), may undo the balance sheet separation of WSE from territorial authority owners. Furthermore, this provision also runs counter to clause 27 of Schedule 1 of the Water Services Entities Act which provides that the Long-Term Plan 2024-34 process must not contain any content relating to water services, including funding arrangements. This new clause would, however, require such content in order for territorial authorities to account for and then rate for stormwater service charges.

The Bill already outlines new stormwater charging provisions that use the capital value of properties. This can easily be incorporated into the transitional charging approach, although some modification will be necessary to the provisions of new section 340.

**NPDC recommends that the Committee:**

- **Amend the Local Government (Rating) Act so that the transitional charging done by a territorial authority on behalf of a WSE can be treated as a rate**
- **Amend new sections 337(2) and 338(3) to provide that WSE can only rely on territorial authorities to undertake charging on their behalf until 30 June 2027**
- **Amend new sections 331, 340 and new clause 61, Part 2, Schedule 1 so that changes occur on 1 July 2027 and cannot be changed before then**
- **Remove new clause 63 of Schedule 1 and instead require water services entities to set a charge per property for stormwater services from 1 July 2024 using a modified version of new section 340, and then use new sections 336-338 for billing purposes.**

## ***Debt repayment***

We also have significant concerns about the debt repayment provisions in the Bill. Schedule 1 inserts a new clause 54 into Schedule 1 of the Water Services Entities Act. This clause requires the WSE to pay each territorial authority for its debt. However, there are several issues with the wording which may enable the WSE to avoid paying some debt associated with water services. These concerns are:

- The debt only relates to “water services infrastructure wholly or partly used in the provision of water services”. This wording has several impacts:
  - This means that operating costs that have lawfully been funded through debt may not transfer. This could include operating costs for future planning purposes which are not currently “used in the provision of water services”.
  - The limitation to “wholly or partly used in the provision of water services” also means that debt for work-in-progress cannot be recovered as it is not “used”.
  - The limitation to “water services infrastructure” also means that non-infrastructure assets that should transfer to the WSE are not covered. This would include assets such as vehicles, computers, and intellectual property. It would also cover any debt for new systems put in place for the transitional charging arrangements.
- The clause implies that there is a five year period for instalment payments as the clause is repealed five years after the establishment date. During that time territorial authorities will still hold the debt, that debt will still incur interest, and territorial authorities will still have to make interest and potentially principal repayments. Whether these costs can be recovered from the WSE are unclear. Five years is also simply too long as it will have significant impact on the debt-to-income ratios for territorial authorities.

While we do not believe it is the intention, the clause creates a very real possibility that territorial authorities will be left with some residual debt associated with water services, and that this debt will have to be repaid by ratepayers.

**NPDC recommends that the Committee amend new clause 54 of new Part 2 of Schedule 1 of the Water Services Entities Act, contained in Schedule 1 of the Bill, to:**

- **Clarify that the amount to be transferred from the WSE to territorial authorities is for all debt associated with the provision of water services, not just for infrastructure already in use**
- **Clarify that the amount to be transferred includes recovery of any costs incurred by the territorial authority in holding that debt from establishment date until the repayment**
- **Reduce the timeframe for instalment payments to being within 1 year of the establishment date**

### ***Concluding remarks***

NPDC reiterates its opposition to the Three Waters Reforms and therefore to the Water Services Legislation Bill. NPDC's preference is for local communities to determine the appropriate way to managing local water assets. This can include local communities deciding to aggregate into regional water companies. However, if the Three Waters Reforms are to continue then a fairer regime needs to put in place so WSE fully fund their activities and do not leave territorial authorities and their wider ratepayer base with stranded costs to bear.

Ngā mihi



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