

# Submission/response

## Water Services Entities Bill

July 2022



# Mihimihi

Ka mihi ake ai ki ngā maunga here  
kōrero,  
ki ngā pari whakarongo tai,  
ki ngā awa tuku kiri o ōna manawhenua,  
ōna mana ā-iwi taketake mai, tauiwi atu.  
Tāmaki – makau a te rau, murau a te tini,  
wenerau a te mano.  
Kāhore tō rite i te ao.

*I greet the mountains, repository of all  
that has been said of this place,  
there I greet the cliffs that have heard  
the ebb and flow of the tides of time,  
and the rivers that cleansed the  
forebears of all who came those born of  
this land  
and the newcomers among us all.  
Auckland – beloved of hundreds, famed  
among the multitude, envy of thousands.  
You are unique in the world.*

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## Introduction

1. The Auckland Council Group thanks the Finance and Expenditure Select Committee for the opportunity to submit on the Water Services Entities Bill.
2. Over the last two to three years, the council has given careful consideration to the Government's Three Waters reform programme. It has done so by applying a lens across the proposals as to what would be best for Aucklanders, the people who have elected the council to make decisions on their behalf.
3. Auckland Council wishes to present its submission to the Finance and Expenditure Select Committee.

## Key points

4. Auckland Council understands and supports the intention of three waters reform, in particular the need, outside of Auckland, for amalgamation to achieve economies of scale and greater professionalism, the need for greater investment in water and the need for regulation to ensure uniform high standards of quality for fresh water and treatment of wastewater, nationwide.
5. We remain unconvinced, however, that the complex governance arrangements and lack of accountability set out in the Water Services Entities Bill will lead to the efficiency gains initially modelled in the government's business case. There are other ways of dealing with the issue of capital scarcity that have not been adequately considered, such as a government guarantee for Watercare's borrowing which would be very low risk.
6. In our opinion, and that of the Minister for Local Government in her June 2021 cabinet paper, it would be possible to exclude Watercare from the reforms on the basis that it already has many of the desired features of the reform. Auckland already has the scale and professionalism sought by reform, with Watercare serving around 1.5 million people, ensuring high water quality and investing strongly in water infrastructure with around \$11 billion planned investment over our 10-year budget period.
7. What Auckland Councillors unanimously do not support is the loss of clear governance by and accountability to Aucklanders through their elected representatives. Strong and clear lines of accountability are essential to ensure good governance and responsiveness of the Water Services Entity to those it serves. The model proposed does not achieve this.
8. While Auckland will contribute over 90 per cent of the population served by the Northern Water Services Entity and will contribute 93 per cent of its assets, the governance role Aucklanders have through their elected representatives will be reduced to their having a minority say.
9. Independent polling of a representative cross section of Aucklanders and submissions made by Aucklanders during consultation in late 2021 show an overwhelming majority of Aucklanders agree that any new water entity should be kept accountable and responsive to the public through their elected council representatives and agree that Auckland Council should have majority control in any new entity.
10. While Government has accepted changes proposed by the Working Group on Representation, Governance and Accountability of new Water Services Entities, including making community ownership clear through Council proportionate shareholding of water assets, these Government changes fall short of what Aucklanders and Auckland Council require in the area of governance and accountability.
11. Democratic accountability, through elected representatives, to people who funded the three waters infrastructure in Auckland valued at more than \$13 billion dollars, and who continue to pay for its operation, is critical. We are strongly opposed to ceding control over this infrastructure to other councils and mana whenua and to remove existing accountability to Aucklanders through elected representatives.
12. In short, our key concerns remain:

- complex governance, with a lack of clear accountability mechanisms to the elected representatives of those who have funded infrastructure assets
- loss of control by Aucklanders over their assets
- lack of representation at a governance level proportionate to investment in assets by Aucklanders;
- transferring stormwater functions to the WSE before there is adequate evidence of the benefits of doing so and the difficulties this will pose for integrated land and water management
- the significant risk and unintended consequences of the three waters reform and the resource management reform and the future for local government review proceeding without full information as to how they will work together given the strong connection between them.

13. These fundamental concerns, which are consistent with previous Council feedback to Government and Mayor Goff's minority report on the Representation, Governance and Accountability Working Group, are addressed in detail below.
14. Should reform continue to proceed without addressing Auckland's fundamental concerns, then we advocate for change to the Bill to mitigate some of the negative impacts on Auckland. These are also addressed in our submission below.



## Tāmaki Makaurau context

15. Auckland Council is a unitary authority. It is the largest council in New Zealand in terms of population and it is also the most diverse. The Auckland region covers a wide range of land uses from dense urban to rural productive, includes areas with important conservation and recreation values, and encompasses a large coastal marine area.
16. Auckland is currently the only council in New Zealand which is required to develop a spatial plan (The Auckland Plan 2050). This plan enables coherent and co-ordinated decision making and responds to the three most important challenges of high population growth, ensuring prosperity is shared amongst all Aucklanders, and arresting and reversing environmental degradation.
17. Auckland Council provides a range of services and programmes to the region through four substantive Council Controlled Organisations (CCOs), including Watercare Services Limited which provides reliable water and wastewater services.
18. Watercare already provides services to more than 1.5 million people who live in Auckland. In doing so, Watercare takes pride in the high quality of water and wastewater services it provides to enable positive and improving outcomes for Auckland's residents and businesses.
19. Watercare invests in systems that will scale appropriately to meet Auckland's expanding needs. A significant proportion of water assets are vested to the council every year from private development. These assets have been in "common control" within the council group.
20. Auckland Council is unique in having an Independent Māori Statutory Board (IMSB) to assist council to make decisions, perform functions, and exercise powers. The Schedule of Issues of Significance and The Māori Plan for Tāmaki Makaurau provide a framework for these to be considered. The IMSB also undertakes Te Tiriti o Waitangi audits to assess whether council acts in accordance with its statutory responsibilities.
21. An IMSB member sits on the council's Appointments and Performance Review Committee, whose role is to appoint directors to the Watercare Board.
22. Māori make up 11.5 per cent of Auckland's total population. Auckland Council recognises and works alongside 19 iwi authorities and mataawaka who make up a large proportion of Auckland's Māori population and Māori community groups.
23. Auckland Council has facilitated a process to make technical support available to iwi in the development of their submissions on the Bill. The Tāmaki Makaurau Mana Whenua Forum has had a key focus on and were partners in the development of the Auckland Water Strategy. This strategy, adopted by the council in March 2022, sets a vision for Auckland's waters and provides strategic direction for investment and action across the Auckland Council group. The vision of the Water Strategy is: te mauri o te wai o Tāmaki Makaurau, the life-sustaining capacity of Auckland's water is protected and enhanced. To implement the strategy, the council will strive to put te mauri o te wai at the centre of group planning and investment decisions and actions.
24. The framework is designed to make implementation steps clear for council so that communities and partners can hold the council group accountable. If the three waters reforms are implemented, this strategy will continue to guide council in its core role as environmental regulator, planning authority, Treaty partner, and voice for Aucklanders' aspirations.

25. Water is recognised as a significant issue in the Tāmaki Makaurau Mana Whenua Forum 10-year Strategic Plan, particularly in its objectives to fulfil member iwi's roles as kaitiaki and to improve and enhance te mauri o te wai. Involvement in the Auckland Water Strategy also featured in the Mana Whenua Kaitiaki Forum's 2021-22 Annual Plan.

# Auckland Council's critical concerns

## Need for reform outside of Auckland

26. Auckland Council supports the need for the Government to reform the water sector and lift standards of water supply quality and wastewater treatment to a uniformly high standard across the rest of Aotearoa New Zealand. However, the council does not believe that the reforms, as currently structured, will be of benefit to Auckland.
27. Water is a public good and its delivery a vital service. Auckland Council understands that there has been broad system failure in the water sector affecting many communities across Aotearoa and that the Government needs to reform the sector to significantly improve the environmental performance and resilience of our three waters.
28. We understand the importance of achieving greater scale and capability in the delivery of water services outside Auckland. This scale and capability may contribute to reversing the inadequate investment in water infrastructure in many areas over a number of years.
29. Auckland Council also supports the need to introduce an economic regulator to improve efficiency and productivity and ensure there is appropriate oversight of water management. Economic regulation could equally be put in place within council's current water service delivery arrangements through Watercare. In other words, economic regulation does not require the establishment of a new WSE in Auckland's case.
30. Auckland Council believes that its objectives for delivery of efficient and effective water infrastructure services to Aucklanders are aligned with the Government's reform objectives. However, there are alternative governance and financial models that would meet the desired outcomes, as proposed in the Mayor's Minority Report, and these should be implemented.

## Ownership and Governance arrangements

31. Auckland Council is strongly opposed to the WSE Bill's governance arrangements which remove democratic accountability and direct control by Auckland Council over the WSE. While some improvements have been made to the Bill, the RRG will be constrained by a range of factors in its ability to influence the direction of the WSEs and Aucklanders lose control of their assets through their elected representatives.
32. We believe that the governance arrangements of any WSE that includes Auckland should reflect the population and financial contribution of Aucklanders. This includes the proportionate investment in the assets by the people of Tāmaki Makaurau Auckland (and of course the associated liabilities). In the proposed Northern Water Services Entity (Entity A), Auckland would contribute 93 per cent of the assets.
33. The Bill specifies that each RRG must include an equal number of territorial authority representatives and mana whenua representatives. There must be no fewer than 12 and no more than 14 representatives.

34. The Representation, Governance and Accountability Working Group recommended a bespoke model for Entity A's RRG comprising:
- 14 members with 50:50 council and iwi/hapū composition
  - The 14 members comprised of four Auckland Council representatives, four Tāmaki Makaurau iwi/hapū representatives, one representative each from the Northland councils and three iwi/hapū representatives from Te Tai Tokerau.
35. This recommended structure is not included in the Bill but the Government has indicated that it will be included in the model constitution. If the Government does not recognise the fundamental concern of Auckland about the proposed governance arrangements, it should at least recognise Auckland's unique position and reflect this appropriately in the constitution for the Northern Water Services Entity. The constitution can be changed subsequently by the RRG so is not safeguarded through legislation. It is also unclear how the constitution will be developed and the council's role in this process.
36. While this is an improvement on the Government's original proposal, the proportional representation of Entity A would not be equitable or representative of the investment, population and assets Aucklanders are transferring to the WSE. The amendments proposed by the Working Group would increase Auckland's voice on the RRG from 12.5 per cent to 28 per cent. However, this would still leave Auckland Council and Aucklanders a minority voice in direction setting over assets they largely own.
37. We support the Government's bottom line of continued public ownership of water infrastructure and services. As part of that, we acknowledge the introduction through this Bill of a shareholding model - allocating one share per 50,000 people - to emphasise and entrench community ownership of the assets and act as an additional safeguard against privatisation. This was a recommendation of the Representation, Governance and Accountability Working Group.
38. However, the model does not provide typical rights of control associated with shareholding. As such, they do not provide for control over the assets by owners. They are more about establishing safeguards against privatisation than providing real ownership rights to local authorities.
39. Given the complex governance arrangements that are proposed in the Bill and the requirements for consensus decision making, there is a risk that stakeholders and communities will not understand the relative roles and functions of the WSE Board, RRG and regional advisory panel. Without clear accountability to an ultimate shareholder or Minister, there is also the risk that decisions will be made outside the formal accountability and governance processes. The roles and functions need to be clear and understood so that parties know where to go in the overall system to seek influence or accountability for particular matters.

## What Aucklanders have told us

40. Auckland Council's views on the Three Waters reforms are strongly backed by the public. We know this because we consulted with Aucklanders and carried out an independent survey to ascertain their views.
41. Through the consultation process, 3457 submissions were received and an independent poll of more than 2000 ratepayers was carried out.
42. More than three-quarters (77%) of submissions received supported the council's position that any new water entity should be kept accountable and responsive to the

public through their elected council representatives. Results of the independent polling were similar, with 67 per cent supporting the council's position.

43. Submitters were even more strongly supportive of Auckland Council having the majority of control in any new entity, with 83 per cent of submitters and 74 per cent of survey respondents agreeing with council's position.
44. Auckland Council's views are reflective of the views Aucklanders have expressed to us in submissions and independent polling.

## Auckland's CCO model

45. Auckland is different from the rest of New Zealand, not just in terms of size but in complexity and the bespoke legislative arrangements which differ from that which governs all other local authorities. This includes a shared governance model that includes local boards with decision making responsibilities, and a large share of council's services being delivered through council-controlled organisations.
46. Auckland Council wants to retain its current CCO model which is enacted through the Local Government (Auckland Council) Act 2009. This legislation provides for "substantive CCOs", responsible for either the delivery of a significant service or activity on behalf of the council or owning and managing assets with a value of more than \$10 million. This feature of substantive CCOs is not replicated in the Local Government Act 2002.
47. There are three substantive CCOs in addition to Watercare Services Limited: Auckland Transport, Eke Panuku, and Tātaki Auckland Unlimited.
48. The role of a substantive CCO is to deliver services for Aucklanders and, through this, to implement the direction set by the council as its shareholder. CCOs are expected to act in the best interests of the council group for the benefit of all Aucklanders.
49. Under this Auckland-specific legislative model, Watercare is solely and simply accountable to the council and council's key governance role is to:
  - appoint directors
  - approve Watercare's statement of intent, which requires Watercare to give effect to council's long-term plan and align with council's strategic plans
  - monitor Watercare's performance
  - modify Watercare's Statement of Intent.
50. These requirements enable both democratic accountability and direct control that Aucklanders have said is important to them.
51. There has been some movement since the Government's initial proposals on the accountability mechanisms of the WSEs and these now resemble more closely the substantive CCO model contained in Auckland's legislation. Auckland Council supports a model like the CCO Watercare legislative framework where real ownership continues to reside with councils and where the WSE is required to give effect to the relevant aspects of councils' long-term plans and growth strategies, and align with and implement strategic plans and other key initiatives. However, unlike our current CCO model, the Government's proposed amended model does not ensure accountability and majority control through Auckland's elected representatives.

52. The CCO model has proven to be effective and an independent review undertaken in 2020 confirmed that “the CCO model remains the right one for Auckland, bringing together strong business disciplines, agile decision-making, streamlined administrative structures, operational efficiencies and specialist skills and expertise”.<sup>1</sup> The Independent Review noted that Watercare had performed particularly well and rated it highly for having a competent board, skilled staff, tailored business-specific systems and processes and economies of scale. We do not need to fix something that is already working well.

## Scale and efficiency advantages

53. Auckland is a high-growth area and requires significant coordination of investment, planning and delivery to achieve the development outcomes that Aucklanders want.
54. The CCO model is considered the most appropriate model to ensure the alignment and coordination between council planning, transport, water and community infrastructure.
55. Auckland has already achieved most of the size, scale, efficiency and competency benefits the reforms are seeking to achieve for New Zealand. Watercare serves over a million and a half customers and already has economies of scale and operates more efficiently than other water services providers in New Zealand. Further efficiencies in Auckland are possible but will mainly be driven by greater access to capital and economic regulation rather than from amalgamation or change in governance arrangements. We support the need for these improvements.
56. The Minister for Local Government acknowledged in her June 2021 cabinet paper that it would be possible to exclude Watercare from the reforms on the basis that it already has many of the desired features of the reform. For that reason, a ‘one size fits all’ approach will not meet Auckland’s needs nor provide benefits over and above those already in place via Auckland’s current water service delivery arrangements. It will in fact detract from what we already have by diminishing responsiveness and accountability.
57. Auckland has demonstrated already that it is willing to share its capabilities and experience through Watercare’s contracting arrangements for delivery of services to the Waikato District Council. Auckland’s offer remains to deliver similar services for Northland councils should they consider it beneficial, and demonstrates how our leadership is aligned with the reform programme’s goal of improving capability in the water services sector.

## Investment and balance sheet separation

58. Auckland Council strongly supports the need to develop alternative financing mechanisms to enable greater investment in infrastructure, including water services. The council has repeatedly advocated to Government on this point. However, there is insufficient evidence that establishing these four water entities will deliver the efficiency gains the Government is expecting.
59. There are also concerns about the cost of the debt envisaged by the Government and whether the WSEs will have the ability to, or be comfortable with, borrowing significantly more. This runs the risk of setting up new entities that will continue to underinvest or be unable to address the existing deficit.

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<sup>1</sup> *Review of Auckland Council’s council-controlled organisations*, Report of Independent Panel, July 2020, p. 1

60. On the Auckland Council side, the transfer of water services assets and liabilities to the Northern Water Services Entity may not provide any increased debt headroom to, for example, accelerate our investment in other infrastructure, as one of the council's credit rating agencies, Moody's, already excludes Watercare from its rating assessment.

## Stormwater

61. Stormwater management is intrinsically linked to the natural environment. Management of stormwater can support placemaking and closely connects with other council roles and functions, e.g. land use. It is comprised of hard infrastructure and natural elements which requires a different approach than for the other two waters which are principally closed systems.
62. Auckland Council has not seen evidence of a robust case for inclusion of stormwater in the reform programme. The Stormwater Technical Working Group focused on **how** assets and functions should be transferred, but not **why**. Auckland Council is seeking a deferral on inclusion of stormwater in the new entity until further work is undertaken, in particular on:
- benefits and costs of transferring stormwater functions from local authorities to the WSE
  - the role of the economic regulator in relation to stormwater functions and how that regulatory framework could appropriately account for the social, community and environmental needs and benefits that are intrinsically linked with stormwater management
  - the significant implications of the stormwater function being entirely separated from council's land use planning and freshwater management functions when it is integral to effective planning outcomes.
  - how an integrated land and water response to big challenges such as degraded natural environments, climate change and growth can be given focus and prioritised
  - how an optimised response to Auckland's natural hazards can be achieved with interventions required across both council and WSE
  - Auckland Council's ability to carry out regional council functions and meet statutory responsibilities without breaking connections between freshwater planning, monitoring, regulatory action at various levels, and implementation.
63. Stormwater as a service (to people and development), and freshwater management are separate functions of local government but are intrinsically linked. To manage freshwater we must manage people and the impacts people and development have on the environment. This role will remain with council as a unitary authority, in giving effect to Te Mana o te Wai and implementing key regulatory planning instruments, primarily under resource management legislation. Therefore the key tools to improve outcomes for freshwater will remain with Auckland Council.
64. The council does not have a closed mind on the inclusion of stormwater in the WSE but believes there has been insufficient work to understand the consequences and to justify its inclusion. This is in the context of Auckland's status as a unitary council and its ongoing role to integrate resource management. This should only be progressed if there is absolute clarity on how Auckland Council as a unitary authority can continue to carry out its regulatory role, and the mechanisms that would connect

delivery of stormwater functions within the WSE with land use and transport planning and environmental management within council have been adequately tested. These issues cannot be resolved simply by establishing service level agreements.

65. Distinguishing between stormwater and local park assets and the provisions that manage such areas for differing purposes has been raised as a key operational issue. These areas provide mutual benefit to both stormwater management, biodiversity and recreation outcomes,
66. The new water entities will have a significant task ahead of them to implement these reforms. It would make sense for them to focus on amalgamating and delivering water and wastewater services in the first instance and leave stormwater decisions until there is an adequate case to support their transfer.
67. The council is not opposed to the WSE contracting the management and maintenance of stormwater assets as interim steps.

## Central government reform programme

68. Councils make decisions on land use, urban form (including open space and parks), road and transport services, three waters, waste management, flood risk management, freshwater and coastal management. These decisions affect how New Zealanders live, work and run businesses.
69. Removal of three waters from Auckland Council removes 28 per cent of its assets and a function critical to the role of local government. As such, it further centralises an already centralised political system, ignoring calls for localism and support for the principle of subsidiarity.
70. In addition to the three waters reforms, there is a substantial programme of central government reform across many interconnected systems, including resource management, climate change, and an ambitious programme of national direction including the national policy statements for urban development, freshwater management, indigenous biodiversity and highly productive land. In addition, the government is conducting a review into the future for local government.
71. All these reforms have been undertaken by different national agencies and developed concurrently without evidence of a clear understanding of how they intersect and where there may be conflicting priorities or objectives.
72. That has resulted in insufficient coordination and alignment across these reform areas, and not enough provision within the proposed policies and legislation to ensure ongoing alignment and coordination after they come into effect.
73. Moreover, some reforms seem to have contrary aims. For instance, resource management system reform seeks greater integration between infrastructure provision and decision making and land use management whereas Three Waters Reform aims to remove key infrastructure from local government's control. For example, enabling housing and urban development is an objective but there are no mechanisms to link the infrastructure strategy and asset planning or the statement of intent of the WSE with land use planning of the territorial authority owners.
74. It is unclear how these reforms will work together to achieve outcomes that Aucklanders and the Government want and there are no mechanisms in the current Bill that set out the respective roles of councils and WSE in responding to and implementing these reforms.



## Coordinated planning and investment

75. There is an overall need to simplify the planning, financing and delivery of infrastructure for Auckland, not to add to its complexity or create unintended consequences.
76. As the economic power-house for New Zealand, Auckland needs to deliver coordinated and timely investment. Auckland Council is seen by the public as the entity responsible for planning and infrastructure investment in Auckland. Dilution of the council's role will exacerbate piecemeal planning and infrastructure provision, making it harder to ensure we have pipes and roads in the right places at the right time.
77. The amalgamated Auckland Council was established to achieve strategically cohesive and effective planning and decision making across the region. Since establishment, central government has moved responsibility for the Regional Land Transport Plan from Auckland Council to Auckland Transport. The Three Waters reforms will remove key decision making responsibilities regarding planning for water services from Auckland Council to a combination of the new WSE and the regional representative group (RRG). We are currently awaiting the introduction of the Natural and Built Environment Bill and the Spatial Planning Bill as part of the resource management reforms. Proposals to date include decision making for key land use plans and regional spatial strategies to be removed from Auckland Council to a new joint committee of local government, mana whenua and central government representation.
78. The cumulative impact of these reforms is to fragment decision making, planning and the provision of infrastructure for Auckland. Prior to amalgamation, Auckland was, in the main, segmented geographically. The result of these central government interventions is to segment Auckland functionally. This fundamentally undermines the driving force behind the benefits expected and achieved from the formation of Auckland Council as a result of the Royal Commission's Inquiry into Auckland's governance.
79. The Bill does not expressly set out a strategic planning function for WSEs, nor does it require alignment of water service delivery with the strategic planning function of territorial authorities. There is nothing in the Bill on how the WSE will receive strategic direction from the territorial authority owners, or how interaction of water with other infrastructure areas will occur to make good decisions about where housing and urban development or council environmental programmes should be supported. This strategic direction logically sits with the territorial authority with the mandate of the community through democratically elected officials, partnership with mana whenua and consultative processes.
80. Alignment and coordination of infrastructure investment will be made more difficult with separation of water infrastructure. In particular, it is questionable under current financing arrangements whether council would have the ability to match the water entity's spend with respect to transport and community infrastructure in out of sequence growth areas. Without clear agreements between council and Entity A over the timing and staging of growth, council will face significant challenges in delivering transport and community infrastructure in all areas of development capacity that the entity could choose to enable through its investment, including private plan changes.
81. Auckland Council is concerned about the ability to integrate WSE and council planning and reporting requirements, and weak mechanisms for the involvement of

territorial authority owners. We are also concerned about dispute mechanisms for customers and question who is ultimately responsible when there are disagreements between infrastructure and utility providers. Without understanding the powers, responsibilities and functions of the various participants in the system, it is hard to ensure that the governance and accountability structures are fit for purpose.

82. There is much duplication and overlap of requirements, including the preparation by the WSE of a 30-year infrastructure strategy, which fundamentally undermines the intention of a territorial authority owner's infrastructure strategy to coordinate across infrastructure portfolios. There is also no direction in the Bill as to how those processes and plans will work together to achieve a coordinated plan of investment for Auckland.

## Mitigating negative impacts if reform proceeds

83. Should reform continue to proceed against Auckland's fundamental concerns, then we advocate for specific changes to the Bill to mitigate some of the negative impacts on Auckland.

## Transition and transfer of assets – general points

84. Auckland Council is concerned about the clauses that remove a council's autonomy or ability to engage during the transition period.
85. A key decision in the implementation of these reforms relates to the transfer of functions and assets. The WSE Bill does not determine which assets transfer to the WSE. This will become the responsibility (via an allocation schedule) of the establishment chief executive of the WSE.
86. The Bill provides no role for local authorities in determining which of its assets, functions and staff should transfer. Nor does it require either the DIA CE or the establishment CE to engage with the council as they develop an establishment plan and allocation schedule that specifies assets that relate wholly or partly to the provision of water services and sets out assets that should not transfer.
87. It is not appropriate for the establishment chief executive to be responsible for the preparation of allocation schedules in isolation from the territorial authority owners.
88. Decisions on functions and assets appear to be weighted towards the WSE being set up to deliver on its objectives without due consideration to the ongoing roles and regulatory responsibilities of the councils from which the assets and staff have been transferred.
89. Auckland Council expects a more robust process and a role for councils in determining which of its assets should transfer to Entity A if our submission to retain our existing legislative framework is not supported by the Select Committee. This issue will be particularly acute with stormwater assets which are less easy to separate than water and wastewater assets as discussed in the section above.
90. Under Auckland Council's governance arrangements, the council's 21 local boards are the decision makers on local reserves, including those with a stormwater function. The planning, investment, management and integration of these is of significant local importance given they are so much a part of local place shaping and environmental integrity. There is significant concern from local boards that their role will be undermined and that assets which they consider to be key community and placemaking assets will be removed from their control, further weakening democratic accountability, and risking the broader delivery of a local reserve's functions, uses and values. There is also an interdependency between financing and management obligations, not just the nominal ownership of land.
91. The process as proposed will require a complex set of service level agreements and relationship agreements. These will be time consuming and costly to produce and monitor.

# Response to the Bill's specific provisions

## Part 1 Preliminary provisions (Clauses 3-6)

### Key points

- Provide greater clarity of purpose statement including which functional elements take precedence immediately.
- Auckland Council supports provisions to give effect to the principles of Te Tiriti o Waitangi and Te Mana o te Wai
- Require persons to give effect to Te Mana o te Wai in a manner consistent with how local authorities do so for the purpose of Freshwater Management Plans
- Include definitions of mana whenua, iwi and hapū, and Māori in Interpretation and use these terms consistently throughout the legislation

### *Purpose (Clause 3)*

92. The purpose is very broad which could require decisions about which functional elements take precedence immediately.

### *Te Tiriti o Waitangi/the Treaty of Waitangi and Te Mana o te Wai (Clause 4)*

93. Clause 4 requires all those performing or exercising duties, functions, or powers under this Act to give effect to the principles of te Tiriti o Waitangi and to give effect to Te Mana o te Wai, to the extent it applies to those duties, functions or powers.
94. Council supports this provision and notes that it addresses a prior inconsistency and/or ambiguity on how te Tiriti would apply to WSEs, and is consistent with Clause 6 of the exposure draft of the Natural and Built Environment Bill.
95. Consideration needs to be given to whether the legislation should require persons to give effect to Te Mana o te Wai in a manner that is consistent, to the extent possible, with how local authorities give effect to Te Mana o te Wai for the purpose of Freshwater Management Plans.

### *Provisions on Te Tiriti o Waitangi/the Treaty of Waitangi (Clause 5)*

96. Clause 5 clarifies that the Bill provides for the overarching Clause 4 Tiriti provisions and various specific obligations in order to recognise and respect the Crown's responsibility to give effect to the principles of te Tiriti.
97. Council supports the capture of the various Māori/te Tiriti provisions in a single provision and clarification of how they work together.

### *Interpretation (clause 6)*

98. The "mana whenua" definition needs to be clarified to avoid any undue difficulties for implementation of relevant provisions, such as the WSE processes for engaging with mana whenua and responding to Te Mana o te Wai statements.
99. Definitions should be included in the Interpretation for "iwi and hapū" or "Māori".

100. To avoid ambiguity, the use of “Māori” and “iwi and hapū” and “mana whenua” through the Bill should be with deliberate intent and clarity on the differing meanings intended.

## Part 2 Water Services Entities (Clauses 10 – 114)

### Subpart 1 Establishment of water services entities (Subpart 1)

#### Key points

- Include statutory direction in the objectives on the requirement for the WSE to coordinate and align its services and infrastructure delivery with planned strategic growth of the territorial authority owners, and support the environmental regulation and management role of councils
- Restructure objectives to clarify relationship to each other and intended hierarchy
- Amend objective 11(c) to read “support urban development and strategic growth planned by territorial authority owners”
- Amend 11(f) to read ““operate in accordance with best environmental practice including delivery of water services in a sustainable and resilient manner that seeks mitigates the effects of, and is responsive to the impacts of, climate change and natural hazards deliver water services”
- Clarify functions of the WSE (clause 12) to reduce risks of overlap and duplication, and to ensure clear accountability on regulation and management of environmental systems
- Include specific mechanisms to enable the operating principles to be applied
- Include an operating principle in relation to the need for the alignment and integration of water services and infrastructure delivery with planned strategic growth by territorial authority owners

#### *Objectives of water services entities (clause 11)*

##### Primary concerns

101. Auckland Council requests statutory direction be provided in the objectives (Clause 11) in relation to how:
- the WSE is required to coordinate and align its services and infrastructure delivery with the planned strategic growth of the territorial authority owners, including alignment with other infrastructure areas (objective 11 (c) is discussed further below)
  - the WSE supports the distinct environmental regulatory and management role of the territorial authority owners, unitary authorities, and regional councils as part of its partnership requirements, under operating principles 13(g).

##### Additional concerns

102. Overall clause 11 is poorly constructed: the relationship of the objectives to each other is unclear; it is also unclear whether there is an intended hierarchy of the objectives.

103. We request changes to the **structure** of clause 11 as follows (with supporting comments below that relate to the intent and wording of (a) to (f)):
- The objectives of each water services entity are to deliver water services and related infrastructure in a way that:
    - a. Is efficient and financially sustainable
    - b. Protects and promotes public health and the environment
    - c. Supports and enables housing and urban development
    - d. Operates in accordance with best commercial and business practices
    - e. Acts in the best interests of present and future consumers and communities
    - f. Is sustainable and resilient and seeks to mitigate the effects of climate change and natural hazards.
104. We also suggest that the objectives could be re-ordered to be more consistent with the hierarchy of obligations set out in the National Policy Statement Freshwater Management.
105. Consistent with the restructure of clause 11 proposed above, clause 136 (2) (b) should be amended to require the WSE to give effect to all objectives under section 11 overall not only to 11(a).

Concerns on specific included objectives

106. Objective (a) *deliver water services and related infrastructure in an efficient and financially sustainable manner*
- and
- Objective 11 (c) *support and enable housing and urban development*
- As currently drafted, objective (c) raises the risk that the WSE can set its own agenda for housing and urban development. The current drafting does not prevent the WSE meeting objective 11 (c) through infrastructure provision to support out of sequence private plan change requests and/or consenting, overriding the statutory land use planning and long-term planning role of territorial authority owners (and the efficacy of future strategic planning as envisaged in resource management reform).
  - Although any role for the WSE in enabling housing and urban development must be aligned to the strategic priorities as set out in the Statement of Strategic and Performance Expectations issued by the RRG (Clause 136), the RRG is not the same as the territorial authority owners and those strategic priorities are likely to differ from territorial authorities' planning and local government documents, given the number and membership of the RRG.
  - The setting of strategic priorities is off-set by the independence of the WSEs and the inability of the RRG under clause 115 to direct the WSE in the performance of its functions.
  - There is tension between (a) and (c) as enabling housing and urban development may run counter to the efficient and financially sustainable delivery of water infrastructure (objective (a)) if that urban development is out of sequence or in a location for which infrastructure provision is not planned, including its financing or inclusion in the relevant timescale of the WSE's infrastructure strategy.

- Integrated infrastructure decisions create efficiencies and contribute to financial sustainability. For growth areas, a “value for money” solution is needed across all infrastructure areas – it may be expensive for one area but relatively inexpensive for another. Auckland Council currently has a view across all infrastructure areas and what impact this has on price. This enables a “whole” decision to be made and satisfies the financial policy requirements under the Local Government Act 2002.
  - Currently in Auckland, joint priority areas are agreed between the Crown and Auckland Council. It is unclear what status these priority areas will have in the future and/or how future priority areas may be developed, and what role the WSE will play.
  - Therefore, Auckland Council requests that objective (c) be reworded as follows:
    - “support urban development and strategic growth planned by territorial authority owners”.
    - We further request a consequential change is made to the matters that may be included in a Government policy statement under clause 130 (3).
    -
107. Objective (d) *operate in accordance with best commercial and business practices*
- While this objective is supported, there is an omission in terms of an objective that requires the WSE to operate in accordance with best environmental practice.
108. Objective (e) *act in the best interests of present and future consumers and communities*
- This objective should be linked more overtly to the service delivery role of the WSE, to ensure it cannot enable development that is not aligned to territorial authority owner plans or to strategic priorities set out in the SSPE.
  - Additional requirements should be inserted in reporting obligations under Part 4, Subpart 4 so that whole of life costs, and long-term decisions about growth and asset management planning are incorporated into asset management and infrastructure strategy requirements.
109. Objective (f) *deliver water services in a sustainable and resilient manner that seeks to mitigate the effects of climate change and natural hazards*
- This objective should be amended to “operate in accordance with best environmental practice including delivery of water services in a sustainable and resilient manner that seeks mitigates the effects of, and is responsive to the impacts of, climate change and natural hazards”. As well as mitigating the effects of climate change, WSEs will be required to undertake adaptation measures to respond to climate change, e.g. managed retreat.
  - The Auckland Water Strategy notes that climate change is already impacting both water demand and availability, which will continue to increase over the coming decades. The Northern Water Services Entity will be required to address and respond to the impacts of a changing climate while ensuring Auckland’s future water security.

### *Functions of water services entities (clause 12)*

110. Care needs to be taken in drafting this section which sets out the functions of WSEs, to ensure that the objectives and functions are not so broad as to impinge on the regulatory functions of councils, but also enable already-established ancillary operations that carry out water related services, which do not replicate council's functions, to continue.
111. The function of the WSE to provide safe, reliable, and efficient water services is very high-level. If interpreted broadly, "water services" would overlap with functions of local government and risk duplication, and functions being left without clear ownership such as responsibility for management of stormwater (proactive works, maintenance works, and response works) and coastal inundation.
112. In addition, the function as set out could be interpreted to mean that the WSE could consider any natural water body as material to its operations and therefore require its management. This has the potential to create overlaps and confusion when operationalised and has repercussions for the management of natural systems against policy and regulatory drivers. The legislation should be clear that the role of the WSE should not extend to wider water strategy or management where that falls within the distinct regulatory and policy function of territorial authorities/councils.
113. The extent of consequential functions that are taken by the WSE are too broadly articulated to enable clear accountability for management of environmental systems. As a unitary authority, Auckland Council has regional council functions and duties as described in Section 30 of the RMA (1991). They enable the integration of water services activities with other functions of council aimed at addressing environmental degradation associated with broader functions and activities.
114. It is essential that the legislative framework supporting this reform provides clarity on the role of territorial authority owners and regional authorities in strategic planning for infrastructure, and environmental regulation and management. This will help to ensure that the right and sufficient skills and resources are retained by territorial authorities to perform the envisaged functions. Duplication of functions, with attendant inefficiency and conflicts, should be avoided through clear allocation of functions and responsibilities.
115. It is critical this clarity is provided in the legislation to avoid over-reliance (or total reliance) on service level agreements (SLAs). While SLAs will play a role in managing functions that cross over both WSE and territorial and regional authorities, they are a mechanism only for managing that relationship and agreement that has been provided for in legislation. They should not be viewed as or used as the decision-making mechanism for allocating roles and responsibilities since there can be multiple different motivations and drivers that are likely to cause parties to defer responsibility to one another.

### *Operating principles of water services entities (clause 13)*

116. While there is an operating principle to partner and engage early and meaningfully with territorial authority owners, Auckland Council requests that the operating principles under clause 13 be backed up by specific mechanisms that will enable their effective application.
117. There is an omission in the operating principles in relation to the need for the alignment and integration of water services and infrastructure delivery with planned



- strategic growth by territorial authority owners, including strategic and land use planning, transport delivery, and development.
118. The WSE will need to participate in the development of regional spatial strategies proposed under the resource management reforms. This will require the WSE to align its investment programme with wider plans, and ensure adequate resourcing for implementation.
119. Clause 13(f) “partnering and engaging early and meaningfully with territorial authorities and their communities” therefore does not go far enough to foster cooperation between local authorities and WSEs, nor to recognise the critical need for integration and alignment across infrastructure classes. The principle needs to be strengthened to facilitate planned and coordinated urban development and growth.
120. There is no requirement for alignment with strategic growth planning of relevant local authorities such as through the long-term plan, infrastructure strategy, annual plan, regional policy statement, and housing and business assessments produced by local authorities under the National Policy Statement on Urban Development 2022. A similar divergent approach could similarly play out for other national policy statements and national environmental standards, particularly encompassed by the Essential Freshwater package.
121. Amendments should be made to Part 4 and Subpart 4 accordingly:
- In Schedule 3, Parts 2, 3 and 4, replace the term “should” with “must” in clauses 8, 14 and 20 (and in any other place that enables the WSE to omit the results of engagement with territorial authority owners, and with consumers and communities, or omit related summary statements, in relation to reporting requirements).
122. The council also recommends that the operating principle under 13(f) is extended to include:
- regional councils and unitary councils given their significant role in land and water planning, as it achieves several outcomes including an improvement in the natural environment - overall there is a lack of clarity on the intended relationship between WSEs and regional authorities
  - council-controlled organisations that deliver transport infrastructure and services.
123. A service level agreement is not sufficient nor is it the only mechanism by which the requirement to partner and engage early and meaningfully should be established. Service level agreements, as one mechanism, should draw from specified functions set out in the legislation.
124. Overall, the operating principles should explicitly recognise the importance of working with local government on a range of shared strategic challenges. This could be achieved by adding a link in operating principle (f) to objectives (b) to (f) under Clause 11. This would recognise and address the need for integration across a range of infrastructure and outcomes for the community and the environment.

#### *Duties to provide funding and information (clause 14)*

125. There is an expectation that the first constitution will ensure that mana whenua will be adequately supported and resourced to participate. Auckland Council recognises and works alongside mataawaka who make up a large proportion of Auckland’s Māori population. The Bill should also make provision for supporting and resourcing mataawaka participation.

### *Status of water services entities (clause 15)*

#### **Key points**

- Allocation of shares by population expresses community ownership but does not provide typical rights of control associated with shareholders
- Include provision in Bill for proportional ownership/control of WSE to reflect Auckland Council's representation of more than 90 per cent of the customers and contribution of greater than 90 per cent of the assets to Northern WSE
- Provide clarity on treatment of shares should a divestment proposal be successful

126. The allocation of shares by population does not appear to have any purpose other than as an expression of community ownership. The only point in the Act where "ownership" is relevant is in relation to privatisation proposals, and in that situation every territorial authority owner has a veto over privatisation regardless of their shareholding stake.
127. While the composition of the RRG will be set out in the model constitution, it will not confer decision-making rights weighted by shares held by a territorial authority owner for any matter. This expressly limits the utility of shareholdings based on population.
128. Collective ownership of the WSE therefore provides limited control of the Northern Water Services Entity to Auckland Council and there is no provision in the Bill for any proportional ownership/control. This is despite Auckland Council representing 90 per cent of the customers and contributing over 90 per cent of the assets to the Entity.
129. This contrasts to the CCO regime under the Local Government Act 2002 (LGA) where local authorities have shareholdings in CCOs and those shareholdings have more of the usual powers associated with owning shares.
130. Auckland Council expects representation at a governance level proportionate to investment in assets.
131. Clarity is required on the treatment of shares should a divestment proposal be successful. Clause 15(3) states that shares allocated to or reallocated to, and held by, a territorial authority owner cannot, for any reason, be sold, or otherwise transferred. This needs to be addressed in the legislation.

## Subpart 3 Minister's role (Clause 26)

### Key points

- Request clarity on the scope of the Crown's "interests" in the WSEs over and above the ability to intervene through Crown review, observer or manager mechanisms

### Minister's role (clause 26)

132. The Bill sets out the role of the Minister "to oversee and manage the Crown's interests in, and relationship with, the water services entities" and to have the powers to issue a Government policy statement, appoint a Crown review team, a Crown observer, or a Crown manager.
133. More clarity is needed on the scope of the Crown's interests over and above the powers explicitly stated.

## Subpart 4 Regional representative groups (Clauses 27-44)

### Key points

- Auckland Council supports the need for bespoke composition of Northern WSE RRG and that this be reflected in the Bill
- Auckland Council expects a role in developing the model constitution to ensure proportional representation on RRG
- Recommend committee of the whole for board appointments for Northern WSE given the size of the RRG
- 

### Establishment and membership of RRG (Clause 27)

134. The composition of the Northern Water Services Entity will be decided through the model constitution.
135. Council supports the need for a bespoke composition that ensures the RRG has a proportionate relationship to population centres and that this be reflected in the Bill. While the recommendation of the Representation, Governance and Accountability Working Group increases the number of Auckland Council representatives, it still falls well short of proportional representation.
136. It is critical that Auckland Council has a role in the method and process for developing the constitution and that the share of Auckland's assets and population base is taken into account.

### Board appointment committee (Clause 38)

137. Each RRG must appoint a board appointment committee.
138. Clause 38(2) requires that the RRG members appointed to that board committee collectively have the same attributes as those required for WSE Board members that the committee will be appointing.

139. This seems unnecessary and any RRG member Auckland Council would recommend for appointment would also be able to carry out the role of board appointment committee member.
140. Given the size of the Northern WSE, consideration should be given to whether this should be a committee of the whole. This would contribute to a simpler and more unifying purpose.

#### *Disputes (Clause 43)*

141. A dispute between representatives provides for a binding or non-binding process of resolution such as mediation or arbitration which can be expensive and time-consuming.
142. It is unclear what type of dispute it is envisaged might be referred to mediation or arbitration. These are often lengthy processes and could cause issues for the effective operation of the RRG, if resolution is required within a reasonable timeframe to enable the RRG to provide direction to the WSE and more generally carry out its role.

### Subpart 5 Regional advisory panels (Clauses 45 – 55)

#### **Key points**

- Provide clarity on decisions required by regional advisory panels given their primary role is to advise the RRG

143. Clause 48 provides for decisions made by a regional advisory panel to be by consensus or, if consensus cannot be reached, by 75 per cent of the regional advisory panel members present and voting.
144. It is unclear what decisions a regional advisory panel would be making as their role is to advise an RRG.

### Subpart 6 Boards of WSEs (Clauses 56 – 89)

#### **Key points**

- Remove “just cause” provision (Cl 68) for removing board members as it limits powers of the Board Appointment Committee (of the RRG) provided for at clause 80 to remove board member(s) for failure to comply with duties
- Replace “network infrastructure industries” with “water services industries” as a requirement for WSE board member expertise

#### *Membership of board (Clause 57)*

145. Board members must collectively have experience and expertise in four main areas including network infrastructure industries. Expertise in “water services industries” may better reflect the role of the entities.

### *Appointment, removal and conditions of board members (Clause 62 - 74)*

146. Clause 68 enables the Board Appointment Committee to remove a WSE board member at any time for “just cause”.
147. The definition of “just cause” includes “breach of any of the collective duties of the board or the individual duties of members (depending on the seriousness of the breach)”. The words “depending on the seriousness of the breach” are unclear and not appropriate for legislation.
148. Despite Clause 68, Clause 80 allows a Board Appointment Committee to remove all or any of the board members if the board does not comply with its collective duties. Consideration should be given to making Clause 80 a stand alone provision This is to avoid confusion with the “just cause” provision (clause 68) which, as drafted, limits the power of the Board Appointment Committee to use the lever of appointing and removing the Board members to ensure it is accountable.
149. An RRG would have more power and there would be less likelihood of challenges when removing non-performing boards if the “just cause” criteria was not set out.

### *Delegation (Clause 85 - 88)*

150. All delegations under clause 85 are internal. Consideration should be given to any circumstances in which the Board might want to delegate something externally.
151. CI74(1)(b) provides for sub-delegation only with written consent of the board. This is quite limiting because the Board could always choose to restrict sub-delegation even if there is a power in legislation.
152. There may be a need for a delegations register that is signed off by the board to enable effective sub-delegation. For comparison, the LGA contains a sub-delegation power without this restriction.

## Subpart 7 Constitutions of water services entities (Clauses 90 – 96)

### **Key points**

- Auckland Council expects a clear process for involvement in the constitution’s development since it is an extremely important document, determining representation arrangements of the RRG amongst other things

153. The constitution of the WSE will be an extremely important document. Amongst other things, it will determine the appointment of RRG members. Auckland Council requests that the constitution is limited to how the water services entity will operate and act. A separate agreement is required in relation to the governance arrangements of the RRG.
154. While there is provision for the constitution to be changed, it requires 75 per cent support of the RRG and approval by the Minister.
155. Auckland Council has a high interest in the development of the model constitution, and is concerned that this is to be left to be worked out in regulations. We expect a clear process for involvement in its development to ensure it is as fit for purpose as possible

## Subpart 8 General provisions relating to regional representatives, regional advisory panel members, and board members (Clauses 97 – 114)

### Key points

- Provide legislative direction that a person cannot be both a member of a RRG and a regional advisory panel, given the role of the regional advisory panel is to advise the RRG
- Provide ability for WSE to seek information on costs for which RRG, regional advisory panel, territorial authority owners and mana whenua seek funding on

156. There appears to be nothing in the provisions to preclude a person becoming a member of both a regional advisory panel and a RRG. Council queries whether this is appropriate given the main role of the regional advisory panel is to provide advice to the RRG.
157. Clause 114 sets out the duty for a WSE to provide funding to its RRG and regional advisory panel, or to its territorial authority owners and mana whenua in relation to remuneration, expenses or costs incurred in performing their duty.
158. The areas of costs for which funding are to be provided would be set out in the constitution. These are very broad, and a WSE should have the ability to seek information on these costs.

## Part 3 Operation of water services entities (Clauses 115 – 128)

### Key points

- Provide more clarity in clause 115 on where WSEs are independent and cannot be directed – as currently drafted, this could create uncertainty
- Expand definition of water services assets under clause 116(3) to include “revenue” so that the WSE is not forced to hold a charge over its customers’ properties which would undermine the territorial authority owner’s position
- Clarify the specific consultation requirements of the WSE in relation to proposed joint arrangements to provide water services
- Amend clause 117 to require the WSE to consult with and seek agreement of the RRG before making contracts to provide water services

### *Safeguarding independence of WSEs (115)*

159. Clause 115 needs to provide further clarity in what respects WSEs are independent and cannot be directed, and in what respects the WSE must follow the Statement of Strategic Performance and Expectations and the Government policy statement.

160. Section 113 of the Crown Entities Act, on which this clause is based, is narrower and only prohibits direction in relation to a “statutorily independent function” which is a defined term in the Act.
161. In addition, clarity is needed on the potential impact on a territorial authority owner’s role in, for example, regulating the WSE for non-performance against consents.

#### *Obligation to maintain water services (116)*

162. Clause 116 directs that a WSE must continue to provide water services and maintain its capacity to meet its obligations.
163. Under clause 116(2) a WSE must not use water services assets as security for any purpose. This is consistent with section 130(3)(a) of the Local Government Act 2002 (LGA). However, under section 112 of the LGA, the definition of asset includes “any revenue ... of the local authority capable of being subjected to a charge”. Under clause 116(3) of this Bill, the definition of water services assets does not include revenue.
164. If a WSE is able to offer its revenue as a security, then in practice it would need to hold a charge over its customers’ properties. This would undermine a council’s privileged position in terms of the security it is able to provide its lenders. Furthermore, S&P has indicated the WSEs will carry strong credit ratings of AA/AA+ due to the provision of liquidity support facilities by the government. Therefore, there is no need for the WSEs to be providing security for their borrowings.
165. The definition of water services assets under clause 116(3) of this Bill does not include revenue and therefore should be expanded to do so.
166. Relatedly, under clause 151(2)(b), the WSE is required to include its policy on the giving of security for its borrowing in its funding and pricing plan. This requirement should be removed, which would take away the WSEs’ option of providing security for their borrowings. It is standard practice for large corporate entities to borrow on an unsecured basis, usually providing lenders with the comfort of backing by a legal undertaking such as a Negative Pledge Deed.
167. The powers under sections 192 and 193 of the LGA to restrict water supply to a person who wastes water or otherwise fails to comply with requirements are not replicated in this Bill.

#### *Contracts and joint arrangements for the provision of water services (117 - 118)*

168. The council would not be opposed in principle to the WSE contracting out aspects of water services. However, there should be a requirement to consult with and seek the agreement of the RRG, especially if the contracts were related to activity outside of the entity’s regional boundaries.
169. The requirement to consult on a joint arrangement under Part 6 of the Local Government Act 2002 (LGA) lacks specificity given there are a range of requirements in Part 6, including in relation to the special consultative procedure. Clarity is needed on what procedures the WSE would be required to follow, for example, the consultation principles set out under section 82 or the special consultation procedure under section 83.

## Part 4 Financial and accountability matters (Clauses 129 – 168)

170. The Bill fails to address the complexity of the planning landscape and the roles and relationships involved in water services delivery and regulation. In addition to the documents required under this section, territorial authorities and regional authorities will continue their planning role through, for example, the long-term plan and regional plan. It is essential for reasons of democratic accountability and economic efficiency that all these mechanisms work together towards the same outcomes.
171. This includes the interactions that will be required between WSEs, regional authorities, and territorial authority owners to deliver on growth and other strategies and achieve important goals such as those related to addressing environmental outcomes and climate change.
172. The Bill does not provide any guidance on how this will occur. There are additional risks of misaligned timeframes for the preparation of respective documents which has the potential to create confusion for the community and consultation overload.
173. Planning mechanisms also need to be cognisant and aligned with the resource management reforms and existing policy and environmental statements. The legislation should include linkages between the WSE planning mechanisms and those of the wider environmental planning system. These mechanisms would make the hierarchy and applicability of the mechanisms clear.
174. Given the overriding objective of these reforms is to improve delivery of water services and environmental performance, there should be more holistic feedback loops and systems of management and reporting articulated in the legislation.
175. This includes clear articulation of the role of regional authorities as regulator of wastewater and stormwater discharges as well as freshwater/natural systems and, in particular, the role of regional authorities in setting environmental limits (e.g. National Policy Statement on Freshwater Management) and performance requirements in partnership with Taumata Arowai.
176. Taumata Arowai is clear that regulation of discharges from wastewater and stormwater networks will be undertaken by regional councils, along with management/regulation of natural freshwater systems. This is consistent with expectations from other central government agencies and Auckland Council, in meeting relevant regional statutory obligations to the environment.

### *Government Policy Statement on water services (129 - 134)*

#### **Key points**

- Provide statutory direction for managing conflicting strategic directions between the Government policy statement, the Statement of Strategic and Performance Expectations, and Te Mana o te Wai statements
- Define “other agencies” expected to support the Government policy statement and clarify support the Government would provide them in this role
- Extend the named interested groups with whom the Minister must consult as territorial authority owners, regional authorities and mana whenua, and the economic regulator (once established)



177. The purpose of a Government policy statement is to state the Government's overall direction and priorities for water services. It is to be used to inform and guide agencies involved in water services.
178. A WSE must give effect to the Government policy statement when performing its functions.
179. These provisions enable a future Minister to impose a set of priorities on the WSEs that override the policy positions of the RRG (as set out in the Statement of Strategic and Performance Expectations) and of their territorial authority owners.
180. The WSE must give effect to both the Government policy statement (water) and the Statement of Strategic and Performance Expectations (SSPE). The Minister should therefore have regard to whether the Government policy statement is consistent with other relevant government policy statements (e.g. housing, transport) and the SSPE issued by the RRG.
181. This would ensure that WSEs are not in a position where they are required to comply with conflicting strategic direction.
182. In preparing this policy statement, Clause 131 (b) requires the Minister to consult the WSEs, the RRG, Taumata Arowai, and other persons and groups who have an interest in water services. While we support the need for consultation, given the policy statement will be setting expectations for other agencies, there must be a requirement for the Minister to engage with, rather than simply consult, interested groups.
183. Territorial authority owners and regional authorities should be named as specific interested groups under 131(b) given their role in promoting sustainable urban form and land use, as should the economic regulator once established.
184. The policy statement must also set out how the Government expects other agencies to support that direction and those priorities, yet there is no indication as to what support the Government would provide to those agencies. The Bill should provide clarity on this and define "other agencies".
185. There is a requirement under Clause 130(2)(d) that the Government policy statement must set out the Government's expectations in relation to Māori interests, partnering with mana whenua, and giving effect to Te Mana o te Wai. However, there is an omission in Clause 131(b) in that there is no corresponding requirement for the Minister to consult with mana whenua when developing the policy statement.
186. Clause 4 of the Bill requires all persons performing functions under this Act to give effect to Te Mana o te Wai to the extent that it applies to the duties and functions of the entity. Clause 140 provides for an individual iwi or hapū or a group of iwi or hapū, to provide the WSE with a Te Mana o te Wai statement. The WSE must respond to that statement and include a plan that sets out how the WSE intends to give effect to Te Mana o te Wai.
187. There is potential therefore for the Government policy statement and Te Mana o te Wai statements to direct different outcomes and activities. There needs to be consideration of how any conflicts might be resolved.
188. The term "agencies" under clause 130(2)(c) needs to be defined to provide clarity on whether there are any statutory requirements on organisations other than the WSE.

**Key points**

- Provide statutory direction on the determination of strategic content to be included in the SSPE and the mechanism by which it will be prepared and issued
- Provide direction on how tensions between objectives of territorial authority owners on the RRG can be reconciled
- Provide statutory clarity that it would not be inconsistent for the SSPE to include strategy or performance expectations that are more stringent or ambitious than the Government policy statement

189. The RRG must issue a SSPE for the entity every three years and review it at least annually.
190. The purpose of the SSPE is to state the RRG's objectives and priorities for the entity and inform and guide the decisions and actions of the WSE board.
191. The WSE board must give effect to the SSPE, and the RRG must annually review the performance of the board in giving effect to it.
192. There is no statutory direction for determining the strategic content to be included in the SSPE particularly, but not only in relation to, infrastructure provision required for growth, and alignment with the land use and environmental planning approaches by territorial authority owners contained in their district plans.
193. On a practical level, there is no mechanism included in the legislation by which the RRG will prepare and issue the SSPE. This includes no direction as to how tensions between objectives of the territorial authority owners that the RRG represents are to be reconciled in the development of the SSPE or ultimately by the WSE Board.
194. Clause 136(3) requires that the SSPE must not be inconsistent with the direction and priorities for water services in the Government policy statement. There is a risk under this provision that the policy statement articulates national expectations that are lower than those currently agreed in the Auckland region, which could lead to lower levels of investment in areas that are important for Auckland.
195. The SSPE must be able to maintain agreed outcomes for Auckland where they are beyond the baseline set nationally. Council recommends, therefore, that the Bill provides clarity that it would not be inconsistent for the SSPE to include strategy or performance expectations that are more stringent or ambitious than those set out in the Government policy statement.
196. While clause 139 requires the RRG to undertake the annual review of the Board's performance, there are no clear provisions that set out what action the RRG can take should the Board not give effect to the statement. Provision needs to be made in the legislation for the RRG to be able to take action in such a case. Under clause 84, a regional representative can bring proceedings to restrain the Board from contravening a requirement of the Act (which could include the requirement in clause 137 to give effect to the SSPE) however this mechanism should be a last resort.
197. Earlier in this submission we have argued for the removal of the "just cause" provision (Clause 68) as it limits the powers of the RRG's Board Appointment Committee to remove board members.

## Te mana o te wai statements for water services (140 - 142)

### Key points

- Provide clarity on the mechanism by which the WSE will engage across a number of Te Mana o te Wai statements and how overlapping interests will be addressed

198. Mana whenua whose rohe or takiwā includes a freshwater body in the service area of a WSE may provide the entity with a Te Mana o te Wai statement for water services. The WSE must respond to a Te Mana o te Wai statement including a plan that sets out how it will give effect to Te Mana o te Wai.
199. Clarity is needed on the mechanism by which the WSE will engage across a number of Te Mana o te Wai statements, and how overlapping interests and/or statements will be addressed.
200. We understand that the Government is undertaking further policy work to identify how a whole of system view can be achieved in relation to the health and wellbeing of all water bodies affected by the three waters system, and that the outcomes of this work will be included in the second bill. This may speak to clearer linkages between different bodies than a functional integration that can create further problems elsewhere.

## Subpart 4 Reporting obligations (Clauses 143 – 164)

### Key points

- Remove the requirement for a separate infrastructure strategy for water services which will reduce the ability to plan effectively and treat infrastructure as a single system that serves communities
- To maintain the benefits of an integrated infrastructure strategy the Bill should:
  - Require the asset management plan (AMP) for at least 10 years and ideally 30 years
  - Align the timing of the WSE's AMP to contribute to the LTP processes of the territorial authority owners, i.e. WSE provides updated AMP 12 months before LTPs are delivered
  - Provide annual AMP updates to the territorial local authorities in the interim years
- Require the investment priorities set out in the asset management plans and infrastructure strategies of the WSE to support the strategic direction of the territorial authority owners
- Ensure requirements in relation to levels of service are expressed consistently across the legislation to provide clarity to infrastructure management and to communities

*Asset management plan (147 - 149) and Infrastructure strategy (153 – 155)*

201. The current system of asset management plan (AMP) and long-term plan (LTP) development for Auckland Council includes:
  - Asset owners develop AMPs for at least a 10 year period
  - Alignment of timing of AMP development across a number of important infrastructure providers for the LTP
  - An Infrastructure Strategy with a view across more than seven groups of activities.
202. This system delivers significant benefits in allowing for region-wide issues (such as climate change and growth), and consideration of trade-offs and opportunities for optimised delivery of outcomes.
203. The benefit of the Infrastructure Strategy is to look out 30 plus years at issues facing infrastructure and to ensure local government is planning for those issues across all infrastructure types, treating infrastructure as a single system that services communities. Taking water infrastructure out of that long-term planning means a fundamental part of that system is not taken into account. Creating a separate infrastructure strategy for only water services does not meet the requirements of an integrated infrastructure strategy.
204. Organisations like Auckland Transport and Auckland's community facilities, with many asset types and a large total asset value, prepare a Strategic Asset Management Plan. This does not replace the need for an integrated infrastructure strategy.
205. In order to maintain the benefits of an infrastructure strategy, we recommend the Bill includes a requirement for the WSE to:
  - Prepare an AMP of at least 10 years and ideally 30 years
  - Align the timing of the WSE AMP to contribute to the territorial authority owner's LTP, i.e. the WSE provides an updated AMP 12 months before the LTP is delivered
  - Provide annual AMP updates to the territorial authority owners in the interim years.
206. An option could also be provided for the WSE and local government organisations to partner to prepare a shared infrastructure strategy, thus maintaining a shared view of the long-term challenges, uncertainties and opportunities. This would also be consistent with the operating principle of partnership (clause 13).
207. Other than the requirement to indicate how the asset management plan will play a part in the WSE's response to Te Mana o te Wai statements, the Bill as written states the content of the asset management plan and the infrastructure strategy must include investment priorities solely in relation to the entity itself. There is no reference to how the investment will support the strategic direction of the territorial authority owners.
208. A cohesive approach to asset management plans is important. As currently drafted then, there is a high likelihood that asset management plans will diverge from the direction in land use plans when dealing with growth and environmental outcomes. This would lead to a suite of issues such as funding and potential for inefficiency and rework.
209. Any asset management plan (and infrastructure strategy should it still be required) should be required to undergo a review by a regulator.

210. Clause 148 (a) should be amended to be consistent with the recommended amendment to clause 11 requiring integration with territorial authority owners' strategic planning and urban development, since the Bill omits strategic guidance as to how priorities are determined and a Government policy statement will not provide adequate direction.
211. Currently local authorities are in a position legislatively and operationally to control and integrate the timing of infrastructure provision with the enabling of growth and development. At the same time, mechanisms are used to balance the spread of costs fairly across developers and the local community.
212. There are no limits in the legislation on the expectations of the WSE to be able to require works to be undertaken as part of a development. Unless strategies to support and fund growth are made more cohesive by the legislation, there is a risk that a high proportion of cost for delivering stormwater, water and wastewater to meet the requirements of the WSE would all fall to the developer, irrespective of the equity or demand placed on the relevant infrastructure.

#### *Funding and pricing plan (150 - 152)*

213. The board of a WSE must provide a funding and pricing plan to the RRG every three years. The funding and pricing plan must include, amongst other things, a financial strategy.
214. While this Bill sets out this requirement, the mechanisms for funding the WSE are likely to be contained in Bill 2.
215. Clauses 151(1)(a) – (c) should be prescribed in a similar way to the equivalent provisions in the Local Government Act 2002 (sections 101A, 102 and 103)
216. Consultation requirements for the development of the funding and pricing plan set out under clause 202 of this Bill are less onerous than consultation processes under the Local Government Act for similar documents which would have a minimum consultation period of a month. A WSE can either consult or “seek input ... on an iterative basis”.

#### *Obligation to prepare and publish annual report (156 - 164)*

217. A WSE must prepare an annual report, provide it to the RRG, and make it publicly available.
218. Council recommends that Clause 159(1) is amended as follows: “As soon as practicable after the end of each financial year, but no later than four months after the financial year to which it relates, a water services entity must prepare financial statements in relation to the entity for that financial year.”

#### *Other provisions for financial management, accounting records and borrowing – subpart 5 (165 - 168)*

219. Council considers the requirement that the Minister of Finance approves foreign currencies deposited in bank accounts at registered banks or registered building societies (Clause 165(5)) unnecessary given that maintaining foreign currency bank accounts is a legitimate tool for managing foreign exchange risk.
220. We note that, subject to a final decision being made with regard to the approach taken to assign existing three waters debt from councils to the WSEs, there may need

to be a provision that excludes establishment loans from the restrictions in clauses 166(1)(c) and (d).

## Part 5 Monitoring (Clauses 169 – 194)

### Key points

- Include formal mechanism for territorial authority owners and the RRG to refer matters to the Minister where they think the Crown should intervene
- Extend the Minister's powers to intervene to include when the WSE is not giving effect to the Statement of Strategic and Performance Expectations
- Extend to include the RRG in the Minister's requirement to consult before publishing a list of matters to be investigated – current requirement is to consult Local Government NZ

### *Minister's powers to intervene – Subpart 2 (174 - 180)*

221. The Bill gives the Crown the power to get involved where a WSE is dysfunctional. It does not require the Minister to consider requests from territorial authority owners and the RRG to intervene where they are of the view the Board is not fulfilling its role. This could be strengthened so that there is a formal mechanism for territorial authority owners and the RRG to refer matters to the Minister where they think the Crown should intervene.
222. Under Clause 174 (b)(ii), the Minister can intervene when the WSE is not giving effect to the Government policy statement. This should be extended to include when the WSE is not giving effect to the Statement of Strategic and Performance Expectations.

### *Minister's powers to intervene – Subpart 3 (181 - 194)*

223. In appointing a Crown review team, a Crown observer, or a Crown manager, the Minister must publish a list of matters relevant to determining what action the Minister will take.
224. Clause 183(5) requires that the Minister must consult Local Government NZ before publishing or republishing the list. The inclusion of this requirement may be referencing a similar requirement under s258O of the Local Government Act 2002.
225. Consideration should be given to the case for consulting the RRG as opposed to Local Government New Zealand.

## Part 6 Miscellaneous provisions

### Key points

- Define scope and content of “proposal” that must be consulted on
- Further define “consumer” in relation to use of stormwater services and those who do not use public assets for water supply or disposal
- Clarify the difference between consumer and community engagement
- Review the purpose of the consumer forum and the skills needed to sit on that forum

### Engagement – Subpart 1 (202 - 205)

226. This section sets out requirements a WSE must undertake in relation to the preparation of a response to a Te Mana o te Wai statement, the model constitution for the RRG, and asset management plans, funding and financing plans, and infrastructure strategies.
227. It is unclear how a WSE could engage on the making of the model constitution when the constitution is made at the recommendation of the Minister by regulations.
228. Clause 202(2)(b) requires the WSE to “seek input during the formulation of a proposal, or feedback on a proposal, on an iterative basis”. This wording is drawn from the Urban Development Act 2020 and is very different to LGA requirements.
229. Engagement requires that a WSE may consult on a “proposal”. The scope and content of a proposal needs to be defined.
230. Clause 202(3) provides for feedback to be sought via social media. Careful consideration should be given to using social media as a channel for giving feedback as opposed to a channel for raising awareness of a consultation. Feedback via social media is difficult for reporting purposes and can be a dumping ground for negative comments. People should be directed to the full documents and supporting information so they are informed before giving feedback.
231. The Bill needs to further define “consumer” to make clear the intent in relation to:
- stormwater services – these are not generally considered to be consumers of these services
  - consumers who do not utilise public assets for water supply or disposal, given they are still subject to plan rules from territorial and regional authorities.
232. Clarity is also needed on the difference between consumer engagement and community engagement.
233. The purpose of the consumer forum under clause 203(2) is to assist with effective and meaningful consumer and community engagement, gather and compile consumer views, assist the WSE to understand consumer needs and expectations, and to reflect and represent the interests and diversity of consumers across the WSE’s region.
234. The purpose is wide-ranging, and to respond effectively, the consumer forum would require technical specialists alongside those with the ability to effectively reflect and represent the interests of a region, in the case of the Northern Water Services Entity, of xxx consumers. The provisions for this forum need to be comprehensively reviewed to provide clarity on the purpose and, consequently, the requisite skills to be a member of this forum.

235. Clause 203(4) requires the chief executive of the WSE to provide a guidance document to the forum that provides for the composition and procedures of the forum. However, this appears to be directed at the forum once established. There is no direction in the Bill on how members will be selected and presumably is left up to the discretion of the chief executive.
236. Section 82 of the Local Government Act 2002 sets out that consultation a local authority undertakes in relation to any decision must be in accordance with a set of principles. These principles are of a very different nature to those set out for WSEs under clause 205.

## Schedule 1 Transitional, savings, and related provisions

### Key points

- The Bill provides no role for territorial authority owners in determining which of their assets, functions and staff should transfer to the WSE
- Auckland Council expects a more robust process and a role in the transition and strongly recommends the following:
  - Include in this Bill a joint approval role between the territorial authority owners and the WSE for the transfer of functions, assets and staff
  - Include in this Bill the principles, policies, processes and guidance for the transfer of assets
  - Remove the provision which enables the chief executive of the Department of Internal Affairs to develop a water services plan
  - Remove the provision which requires the establishment chief executive to develop the allocation schedule
  - Provide a dispute resolution process between local authorities and the WSE for any disagreements that may arise over the allocation schedule

### *Subparts 1 and 2 Transitional provisions relating to establishment and governance of WSEs*

237. These provisions give powers to the Chief Executive of the Department of Internal Affairs (DIA) and the interim Establishment Chief Executive of the WSE. These powers include the preparation of a water services plan and the development of an allocation schedule respectively.
238. The Bill provides no role for local authorities in determining which of its assets, functions and staff should transfer. Nor does it require either the DIA CE or the establishment CE to engage with the council as they develop the services plan and allocation schedule. This creates a risk that the determination of what is transferred is considered solely from the perspective of the WSE.
239. The allocation schedule and water services plan are critical documents in determining the particular mix of functions, assets, and liabilities that will be transferred from local authorities to the WSE under the banner of “water services”. It is likely that many of the practical implications of water reform will be settled via these documents. Under Schedule 1 Clause 15(1) these documents are also likely to determine the staff functions that will transfer to the WSE.
240. It is critical that the ability for local authorities to carry out their functions established under other statutes is not undermined in the transition. The requirements to continue to perform these statutory functions should be a key consideration and incorporated into the preparation of the water services plan.



241. As such, it is wholly inappropriate for the establishment chief executive to be responsible for these documents and decisions in isolation from the territorial authority owners.
242. Auckland Council expects a more robust process and a role in determining which of its assets should transfer to the Northern Water Services Entity. The issue will be particularly acute with stormwater assets which are less easy to separate than water and wastewater assets.
243. Processes, policies and guidance for identifying what should transfer should be set out in legislation, not in a plan prepared by the chief executive of the Department of Internal Affairs.
244. At the very least, the water services plan should contain principles to guide the allocation plan and the transfer of functions and assets, including guidance on whether or not assets that relate partly to the provision of water services should transfer. These principles should address the following key areas:
- Integration of land and water planning, particularly given functions that continue to be delivered by councils
  - delivery of established community expectations
  - resources and skills
  - control of community assets
  - economic efficiency.
245. We strongly recommend the water services plan and allocation schedule are developed in consultation with the territorial authority owners and that there is a joint approval role. This would enable the WSE and territorial authority owners to reach agreement in a collaborative manner, and to reduce the risk of unintended consequences where territorial authority owners are left without the requisite assets and resources to carry out their statutory and regulatory roles.
246. The joint approval role is particularly important in relation to the assets identified under Schedule 1 clause 5(3)(b) where the assets and liabilities relate to both water and other (retained Council) services.
247. In recommending the joint approach and approval we appreciate that, for some entities, it would involve bringing together a large number of territorial authority owners. In the case of the Northern Water Services Entity, there should be no logistical challenges in the four councils that make up the entity working collaboratively with the establishment chief executive.
248. The legislation should provide for a dispute resolution process between local authorities and the WSE as a mechanism for addressing any disagreements that arise over what is included/not included in the allocation schedule.
249. During the establishment period, the Minister retains significant control with all references to the RRG and to the board appointment committee in this Bill to be read as if they were references to the Minister.
250. In addition, the Minister appoints the first Board in the establishment period with no obligation to consult with territorial authority owners.
251. This further compromises the ability of territorial authority owners to engage in the transition process and does not provide adequate representation or input into the appropriate transfer of functions and assets.

252. Transitional requirements for asset management plans and funding and pricing plans during the establishment period are unclear. It appears that these first plans will be prepared without engagement with the territorial authority owners or the RRG.

### *Subpart 3 Review of employment positions*

253. The chief executive of the Department of Internal Affairs must, during the establishment period, review the positions of persons employed by existing employers and determine whether the employee primarily undertakes functions that will be transferred to the WSE or has a senior management role.
254. Provision should be made to ensure the chief executive engages with the territorial authority owners in this review. There are many roles within Auckland Council where employees have multiple responsibilities that include the provision of advice and/or a monitoring or regulatory function in relation to water services. These would not fit the description of “primarily undertakes functions that will be transferred to a water services entity”. Indeed, the functions that will be transferred have not been defined in the legislation.
255. Provision should be made in the legislation to ensure the chief executive of the Department of Internal Affairs actively engages with the territorial authority owners to understand the full extent of the roles of individual employees. This is critical to avoid the situation where council is left unable to fulfil its statutory or regulatory responsibilities as the staff with the requisite expertise have been transferred to the WSE.
256. The chief executive must notify each employee in writing before the establishment date. Consideration should be given to the appropriate notice period, to provide greater certainty and to ensure talent is retained in the water sector.
257. The “senior management role” under Schedule 1 Clause 15(1)(b)(ii) is not defined and they are not accorded the same employment protections. Clarity is needed on the conditions under which senior management will either be transferred or have the opportunity to apply for a role in the WSE.

### *Subpart 4 Oversight powers of department - (21 - 24)*

258. These clauses are designed to constrain local government decisions during the establishment period, and therefore should be removed. Each local government organisation must provide the department with information about an intended decision.
259. During the establishment period, council would be required to inform the department of a decision to borrow past “a date” (yet to be determined) set by the chief executive of the department. The chief executive can decline to confirm the decision which provides them with a say over the council’s borrowing programme.
260. These oversight powers also relate to matters such as adopting or amending the LTP, purchasing or disposing of assets and other (unspecified) contracts.
261. The establishment period starts when this Bill gets royal assent but, at that point decisions will not have been made around assets for inclusion or charging mechanisms (to come in later legislation). Therefore it would be hard to work out which are the relevant decisions for review.

262. The requirement to advise the Department and get approval for certain decisions could create issues with the timing of decision making particularly in emergency or urgent situations.

### *Subpart 5 Transitional tax relief, and recovery of costs - (25 - 26)*

#### **Key points**

- Repeal section 57(1)(b) of the Local Government (Auckland Council) Act 2009 with effect from establishment date so that the Auckland Council Consolidated Tax Group does not lose the benefit of Watercare's brought-forward tax losses worth around \$266 million of tax
- Auckland Council expects the Crown to bear the costs of reform

263. Section 57(1)(b) of the Local Government (Auckland Council) Act 2009 (LGACA) prohibits an Auckland water organisation from paying any dividend or distributing any surplus in any way to the owner or shareholder.
264. The Bill needs to provide either:
- That once separation is achieved, and in spite of section 57(1)(b) of LGACA, Auckland Council can offset losses within the consolidated tax group; or
  - Repeal section 57(1)(b) of LGACA with effect from establishment date, so that Auckland Council is able to use Watercare brought-forward losses.
265. This section of the Act needs to be repealed otherwise the Auckland Council Consolidated Tax Group will lose the benefit of Watercare's brought-forward tax losses, which are worth around \$266 million of tax.
266. Clause 26 provides that any Crown expenses and capital expenditure incurred by the Crown in relation to establishing a WSE is recoverable from the WSE. This is overly broad and unjustified and believe the Crown should bear the costs of the reform to date and until the establishment date.

## **Schedule 3 Preparation of planning documents**

#### **Key points**

- Amend Schedule 3 Clause 6 to clarify that modification by the WSE Board to the statement of intent cannot include strategic elements
- Include regional authorities in the key groups the WSE must engage with on the asset management plan given the integral role of regional councils in land, water and hazard management
- Make provision for the RRG to approve the draft asset management plan, the draft funding and financing plan and the draft infrastructure strategy prior to consultation with territorial authority owners and consumers and communities
- Make statutory provision for the alignment of the timing of the WSE planning documents with the same documents being prepared by territorial authority owners

267. The WSE board is only required to consider RRG comments on the Asset Management Plan, the Funding and Pricing Plan and the Infrastructure Strategy (if it

continues to be a requirement of the WSE). This provides relatively weak oversight/control by the RRG.

#### *Part 1 Statement of intent – (1 - 6)*

268. The board of the WSE must deliver a draft statement of intent to the RRG and the strategic elements of that statement of intent must be approved by the RRG.
269. Clause 6 provides for the WSE board to, upon notice to the RRG, modify the statement of intent. This is at odds with the requirement for the RRG to approve strategic elements. This clause needs to be amended to make clear that the modification to the statement of intent cannot include strategic elements.

#### *Part 2 Asset management plans – (7 - 12)*

270. The board of the WSE must engage with territorial authority owners, and consumers and communities on proposals to adopt an asset management plan.
271. Council supports the inclusion of engagement with territorial authority owners which has been added since the exposure draft of the Bill.
272. Council also recommends that the key groups to engage with is further extended to include regional authorities given the integral role of regional councils in land, water and hazard management.
273. Clause 8 requires the WSE board to provide a draft asset management plan to the RRG that includes the results of engagement with territorial authority owners, consumers and communities and a statement summarising their views. Clause 9 requires the WSE board to consider any comments of the RRG at least two months before the start of the period to which the draft plan relates.
274. These provisions dictate that the RRG only sees the draft asset management plan following consultation and immediately before it comes into effect. This limits the RRG's ability to bring about changes to the plan. The RRG should have the opportunity to approve the draft plan prior to consultation and be able to provide feedback at that point. This also applies to the funding and financing plan and the infrastructure strategy (if it continues to be a requirement of the WSE).

#### *Part 3 Funding and financing plans – (13 - 18)*

275. The Board of the WSE can modify the Funding and Pricing Plan at any time, with a requirement to notify the RRG only. There is no requirement to consult which is different to current requirements under section 102(4)(b) of the LGA where a policy may be amended at any time after consulting on the proposed amendments.

## **Schedule 4 Divestment proposals**

### **Key points**

- Require all RRG members to be present for a vote over divestment proposal or, that is not possible nominate a proxy to vote on their behalf

276. Every territorial authority owner is given a power of veto over divestment proposals. This does not provide Auckland Council with a say proportionate to its shareholding and we seek further consideration of how that can be achieved.

277. For a vote with such significant consequences, there should be a requirement that all RRG members are present for the vote, or if this is not possible, that those who are not able to attend must nominate a proxy to cast their vote.
278. There is an error in clause 3(2) where reference to the RRG referring the proposal to a poll should be updated to territorial authority owners.
279. Clause 1 Interpretation states that a public notice means a notice published in newspapers. We have moved away from print copies, particularly in a pandemic environment. This should be deleted from the Bill so that the definition of “public notices” from section 13 of the Legislation Act 2019 applies.