Submission to the Finance and Expenditure Select Committee on the Water Services Legislation Bill

Contact to speak to submission:

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1. Introduction

Thank you for the opportunity to share our feedback on the Water Services Legislation Bill 2022 (the Bill).

Westland District Council (WDC) is a statutory entity based on the West Coast of the South Island of New Zealand.

Our vision statement is: *We work with the people of Westland to grow and protect our communities, our economy and our unique natural environment.*

The Westland District is approximately 450 km in length and one of the most sparsely populated parts of New Zealand, with an area of 1,186,272 hectares and a population of 8,640 people (2018 Census, Stats NZ). Approximately 33% of the population (2,960) lives in Hokitika. The remaining 66% live in small villages and rural areas such as Ross, Franz Josef and Haast. The district has a focus on the outdoors and outdoor recreation (87% of the land area is DOC land), which is a tourism drawcard, alongside dairy farming, mining and other enterprises.

WDC is a plenary member of the Communities 4 Local Democracy - He hapori mō te Manapori (C4LD) coalition and we support their submission to the Select Committee. On behalf of the Westland Community, WDC owns $117 million of three waters assets. These assets have been bought and paid for by these communities over many generations. The Westland community wishes to retain meaningful control and influence over the three waters assets. We support the submission made by the C4LD group and share in their recommendations. We agree that any changes to Three Waters policy settings would require the protection of council property rights in its Three Waters assets. This could be achieved by adopting an approach similar to the alternative reform model set out in C4LD's and WDC's July 2022 submission to the Finance and Expenditure Select Committee. Cosmetic changes that continue to deprive councils of the right to govern and manage its own assets (albeit under a new regulatory system) would not address C4LD's concerns.

As a member of Taituarā – Local Government Professionals Aotearoa we support their submission to this Select Committee and share in their recommendations.

Reform of the three waters sector is necessary and WDC is in support of this. WDC agrees with achieving appropriate health and environmental outcomes and ensuring that local iwi and hapū have appropraite input into investment decision-making at the local level. Our main concern with this piece of legislation is that any reforms that take place work effectively. To this end, our comments on this Bill are matters of clairfication and identifying areas where the drafting could be improved.

Recommendations:

	Recommendation
1	Pause the Bill pending the outcome of the 2023 General Election set down for 14 October 2023.
	Should the committee not accept recommendation 1 then:
	Collaboration
2	Amend clause 7 to add "collaboration with other infrastructure providers to promote social, environmental and economic wellbeing" to the list of functions of water services entities.
	Government Policy Statement: Water Services

2	Amend section 130(2) of the primary legislation by adding a clause that requires the Government to explicitly state how the Government intends to support other agencies to implement the GPS: Water or explain its reasons for not providing support.
4	Amend clause 130(2) by adding a clause that requires the Minister to undertake an analysis of the costs and benefits of the objectives in the GPS: Water.
	Charges as security
5	Delete clause 15 (the proposed new section 137A).
	Drinking water catchment protection
6	Amend clause 22 (the proposed new section 231(1)) to require the establishment of a controlled drinking water catchment area by public notice.
7	Amend clause 22 (the proposed new section 233) by requiring any drinking water catchment compliance notice be provided in writing.
8	Amend clause 22 (the proposed new section 231(2)) to clarify what constitutes long-term control for the purposes of establishing a controlled drinking water catchment area.
	Stormwater network management plans
9	Amend clause 22 by deleting the proposed section 254(1)(a) and replacing with a new (a) that reads 'a long-term direction for its stormwater network management'.
10	Amend clause 22 to clarify what the obligation to work with the WSEs on development of the stormwater network management plans means.
11	Amend clause 22 by extending the proposed section 257 to include obligations to work with all public stormwater network operators.
12	Amend clause 22 by deleting the word "monitor" from the proposed 254(1)(a) and replacing it with the words "the means for monitoring".
13	Amend clause 22 by adding the words "and regulatory" before the word "requirements" in the proposed section 254(1)(d).
14	Amend clause 22 by removing the requirements to disclose non-strategic information set out in the proposed section 254(1)(h).
	Service Agreements
15	Amend clause 22 (the proposed clause 279) to clarify that service agreements are deemed or implied and do not require the signature of both parties.

16	Amend the Bill by adding further requirements for communication during engagement on the first/transitional service agreements with those who will be liable to pay WSE charges.
17	Amend the Bill to by adding a requirement to notify in writing those who will become liable to pay WSE charges as to where they can find the first/transitional service agreement.
	Funding and charging
18	Add a provision which requires water services entities to set charges in a manner consistent with the current funding and pricing plan.
19	Amend the Bill to include a provision that in proposed new section 334 that WSEs must publish information for water consumers explaining that cross-subsidisation is occurring and why.
20	Amend the Bill to require the entity to levy stormwater charges from establishment date.
21	If the Select Committee rejects recommendation 21 then it clarify that the payment of a WSE levy is an activity for the purposes of the Local Government Act, and clarify how the levy is to be treated in the next long-term plan.
22	Include a provision in the Bill ensuring that WSE charges are assessed and invoiced on a separate document.
23	Amend clause 22 by changing the proposed section 336 to require the Minister to make a determination as to the amount of collection of costs where this is one of the matters referred to the Minister.
24	Delete the proposed new section 342 from clause 22, and delete clause 63 completely, thus making the entities fully rateable
25	Amend clause 22 by adding a provision to the proposed section 319 that both requires the water services entities to contribute to the cost of preparing district valuation rolls, and provides a formula for apportioning costs where parties cannot agree and is based on section 43 of the Rating Valuations Act 1998.
26	Amend clause 22 (the proposed section 326) by adding the words “subject to any operative policy that the entity has on the waiver of debt.”
27	Amend clause 22 (the proposed section 326) by requiring that waiver policies must be published on an internet site maintained by the local authority.
28	Delete the proposed section 348 from clause 22 making the Crown liable for infrastructure connection charges.
	Director of Compliance and Enforcement
29	Amend Clause 22 (the proposed section 351) to require the Director of Compliance and Enforcement to be legally independent of a WSE.

	Transfer of undertakings
30	Amend clause 40(2), schedule 1 to require that any Ministerial amendments to the allocation schedules submitted under clause 40(1), schedule 1 be forwarded to local authorities for comment within 14 days of receipt.
31	Include a further sub-clause to new Part 2 of Schedule 1, clause 43, requiring the Crown to pay compensation to councils for the expropriated assets.
32	Seek advice as to whether the term local government organisation includes council-controlled organisations providing civil construction services.
33	If the reform is to proceed in current form, with ServiceCos being treated as a local government organisation, then the Bill should be amended because it does not clearly contemplate a contract between two local government organisations. This means it does not accommodate the existing ServiceCo contract, which is between a council and a ServiceCo. This could be done through amendments to the proposed new clause 52 of Schedule 1 to the principal Act.
34	If the reform is to proceed in its current form the 'better off funding' from the Crown will need to fully compensate councils and the relevant CCOs for the transfers and their consequential impact.
35	The definition of a local government organisation in Schedule 1, Part 1, cl 1 of the principal Act should and can be drafted to carve a balanced distinction between a true ServiceCo and a CCO that provides water services as a core function. By removing ServiceCos from the definition of local government organisation, clause 49 of schedule 1 to the Bill can be used to transfer specific assets if all interested parties agree it is desirable.
36	Amend Schedule 1, proposed new clause 45, to clarify that a mixed shareholder CCO must also be a local government organisation, thereby limiting the definition to CCOs that provide water.
	Long term plans
37	Amend clause 27, schedule 1AA of the Local Government Act 2002 to exclude amendments to the 2021/31 long-term plans thus ensuring local authorities are able to demonstrate accountability to the community and manage the financial consequences of their delivery of water services to 30 June 2024.
38	Enact recommendations 55 to 57 of the Taituarā submission on the Water Services Entities Bill relating to the content of financial and infrastructure strategies and the repeal of powers to make non-financial performance measures.

Westland District Council wishes to appear before the Select Committe to speak to this submission.

2. Executive Summary

Westland District Council opposes the Water Services Legislation Bill (the Bill) and supports the submissions by C4LD and Taituarā.

We submit that the Bill be paused until the next General Election to allow the Government to consider alternative reform models or receive an electoral mandate for the policy.

In the event that the Select Committee does not recommend pausing the progress of the Bill, we make recommendations to clarify and improve the drafting of the Bill to ensure that the impact on our communities is clear and straightforward.

We outline our concerns about the impact that the Bill will have on certain Council Controlled Organisations, as it is currently drafted, as we believe that this was not the intention of the Bill, and the provisions will have serious impacts on the operation of our Council Controlled Organisations, Westland District Council and our ratepayers. We are disappointed in the perceived change of direction regarding Council Controlled Organisations.

3. Community opposition

As noted in the C4LD submission, the Government's Three Waters policy is widely opposed by communities in New Zealand. The changes to community property rights by first, the Water Services Entities Act, and now the Water Services Bill, has never received an electoral mandate from our communities. With only eight months until the General Election it is appropriate that a pause now occur and that any further work on the establishment of the water service entities ("WSEs") cease until either the Government receives an electoral mandate for its policy or a new Government has the opportunity to recalibrate policy settings. This may require a legislative amendment to the Water Services Entities Act to delay the establishment date of the WSE's.

WDC opposes the Water Services Legislation Bill.

Recommendation:

That the Select Committee

1. **Pause the Bill pending the outcome of the 2023 General Election set down for 14 October 2023.**

4. Relationships with other infrastructure providers

While the Bill in its current form provides for a relationship with road-controlling authorities, there is no provision for relationships between the Water Service Entities (WSEs) and other infrastructure providers. Collaboration between infrastructure providers should enable a range of the outcomes that the Bill seeks to achieve, and that are expected of all infrastructure providers.

There is a missed opportunity within Clause 7 to acknowledge the importance of these relationships. The list of functions set out in the replacement section 13 is silent on the matter. Clause 7 should be amended to include road-controllers, telecommunications and energy providers, in a similar manner to the proposed new s13(j).

Recommendation:

That the Select Committee

2. **Amend clause 7 to add "collaboration with other infrastructure providers to promote social, environmental and economic wellbeing" to the list of functions of water services entities.**

5. Government Policy Statement: Water Services

It was noted by other submitters to the Water Services Entities Act that the Government Policy Statement: Water Services (GPS: Water):

- Concern about the scope of the GPS: Water and its potential to provide central government with substantial powers to exert operational control over the WSEs.

- Concern about the lack of Government support for implementation of the GPS: Water – including funding support and guidance.
- Concern about the lack of a mandatory regulatory/impact analysis on requirements of the GPS: Water.

WDC echoes these concerns and agrees with other submitters that the present Bill further extends the scope of the GPS: Water to empower the Government to set policy expectations with regard to:

1. Geographic averaging of residential water supply and residential wastewater service prices across each water services area, and
2. Redressing historic service inequities to communities.

Geographic averaging reflects the stated rationale for the reforms and the GPS: Water effectively gives the Government the power to average the price of residential services.

Redressing historic iniquities relates primarily to actual or potential breaches of Article III of te Tiriti.[1] The GPS: Water provides the Government with some ability to direct where to invest.

Extending the role of the GPS: Water allows the Minister to exercise significant influence of the WSEs spending decisions, without providing a contribution – financial or otherwise – to achieve their objectives. These priorities could override the policy positions of the Regional Representational Group and local authorities.

We request that the Bill be amended to require the Government to publicly state how it will support the agencies that are required to give effect to the GPS: Water to implement it. This includes, but is not limited to, funding and other workforce support.

A stronger, statute-backed test that requires Ministers to identify the costs and benefits of the policy position they expect WSEs to give effect to would be acceptable.

Recommendations:

That the Select Committee

3. **Amend section 130(2) of the primary legislation by adding a clause that requires the Government to explicitly state how the Government intends to support other agencies to implement the GPS: Water or explain its reasons for not providing support.**
4. **Amend clause 130(2) by adding a clause that requires the Minister to undertake an analysis of the costs and benefits of the objectives in the GPS: Water.**

6. Charges as security

Clause 15 of the Water Services Bill introduces into the statute a new section 137A relating to security charges. Unlike Councils who are democratically accountable for charges on rateable properties, under this new section, if a WSE has granted a security interest over a revenue stream, and the WSE is in receivership, the receiver may unilaterally impose, and collect, a charge on a rateable property to meet the debt commitment entered into by the WSE. Granting such a power to a receiver without any form of democratic accountability for that charge is unacceptable.

If a WSE has entered into a debt obligation (after a management recommendation and Board agreement), then the WSE should be responsible for that debt. Alternatively, the Crown, as effective owner of the WSE's, should be responsible for meeting that debt obligation.

Instead, the Bill allows the Crown, the directors of the WSEs and the management teams to pass on debt in the circumstances of poor business decisions to ratepayers who no longer own the 3 waters assets or have democratic oversight of the owners.

[1] Cabinet Paper *Pricing and charging for three waters services*

Recommendations:

That the Select Committee

5. **Delete clause 15 (the proposed new section 137A).**

7. Drinking water catchment protection

WDC generally supports Part 7 of the Bill, providing WSEs with powers to designate controlled drinking water catchment areas and prepare catchment management plans. Enhanced source protection was one of the key findings out of the Inquiry into the Havelock North Contamination Incident. However, there are points that require clarification.

How WSEs give notice of a controlled drinking water area

There is no process or definition for how a WSE gives notice of the establishment under clause 231(1) of a controlled drinking water catchment in this Bill or the primary legislation.

The likely intent of this notice is probably 'public' notice, defined in the Legislation Act 2019 as:

***public notification**, **public notice**, or a similar expression in relation to an act, a matter, or a thing, means a notice published—*

(a) in the *Gazette*; or

(b) in 1 or more newspapers circulating in the area to which the act, matter, or thing relates or in which it arises; or

(c) on an Internet site that is administered by or on behalf of the person who must or may publish the notice, and that is publicly available as far as practicable and free of charge

The Bill should also be clear on how a clause 233 compliance notice is given. As failure to comply with a direction is a prosecutable offence, a clear evidential chain would be necessary – any direction should be in writing.

Recommendations:

That the Select Committee

6. **Amend clause 22 (the proposed new section 231(1)) to require the establishment of a controlled drinking water catchment area by public notice.**
7. **Amend clause 22 (the proposed new section 233) by requiring any drinking water catchment compliance notice be provided in writing.**

The term 'long-term control' needs definition.

There is no definition in the Bill for 'long-term control'. As WSEs can only establish a controlled drinking water area with permission of the landowner or on land that the WSE owns or has long-term control over a definition is necessary for clarity. We note that the same phrase is used in s12 of the Water Services Act, but this Act does not provide a definition of the phrase.

Recommendation:

8. **Amend clause 22 (the proposed new section 231(2)) to clarify what constitutes long-term control for the purposes of establishing a controlled drinking water catchment area.**

8. Stormwater network management plans

Assuming that Stormwater services are transferred to the WSEs, the provisions of Part 9 of the Bill are sensible. However, there are matters of clarification needed.

The purpose of stormwater management plans is unclear.

Purpose sections are important in every piece of legislation for providing the user and the Court with a statement of Parliament's intent in drafting the legislation.

The purpose of stormwater management plans is set out in clause 22, proposed section 254, with the wording of 254(a) "(to provide a water services entity with) a *strategic framework for stormwater network management*". Using the words 'strategic framework' is jargon and far from plain English. If a stormwater management plan is intended to provide a basis for long-term management of stormwater services the Bill should be clear.

Recommendation:

That the Select committee

9. **Amend clause 22 by deleting the proposed section 254(1)(a) and replacing with a new (a) that reads 'a long-term direction for its stormwater network management'.**
10. **Amend clause 22 by deleting the word "monitor" from the proposed 254(1)(a) and replacing it with the words "the means for monitoring".**
11. **Amend clause 22 by adding the words "and regulatory" before the word "requirements" in the proposed section 254(1)(d).**
12. **Amend clause 22 by removing the requirements to disclose non-strategic information set out in the proposed section 254(1)(h).**

Responsibilities in developing stormwater network management plans are unclear.

A stormwater network management plan is an important document for the WSE, local authorities and wider community. We therefore support the obligation as per clause 257(1).

It is unclear in clause 257(2) what the obligation for local authorities and transport corridor managers to 'work with' WSE's in developing the stormwater network management plan involves, i.e. information sharing, participation in decision-making. The Bill should clarify this point.

Clause 257 should also extend to any interested party that is involved in the public stormwater network, for instance government departments and defence. These bodies should be working together to facilitate the Government's intent in the reform. The terms public entity or public stormwater network operator might be more appropriately applied to the entirety of Part 9, subpart 2.

Recommendations:

13. **Amend clause 22 to clarify what the obligation to work with the WSEs on development of the stormwater network management plans means.**
14. **Amend clause 22 by extending the proposed section 257 to include obligations to work with all public stormwater network operators.**

9. Service agreements

Service agreements are important under this legislation to ensure that there is a legal relationship formed between the WSEs and their customers. This is a necessary step to the removal of bylaw-making powers envisaged elsewhere in the Bill. The intent was that the agreements would extend to all domestic customers and anyone billed for stormwater.

A key aspect of the *Policy proposals for three waters service delivery legislative settings* was that:

"These agreements would be 'deemed' or 'implied' in the sense that individual customers would not need to agree to them, though it would be possible for the default agreements to be replaced by bespoke agreements or contracts (if

both parties agree". [2] This is missing from subpart 5. Due to the nature of water supply, it is impracticable for WSEs to obtain individual service agreements from each consumer.

Without a deemed or implied agreement, there is a risk that customers opposed to the reform will exercise a right of protest by choosing not to agree to the terms of service agreements.

Consumers may be unaware, until they receive their first service agreement, that the provider has changed from the council to a WSE. There should be requirements on the WSE to write to all those who are liable to pay charges advising:

- that the WSE will assume responsibility for delivery of three water services on and from the establishment date
- that the WSE has prepared, and is engaging on a customer agreement (including where the user can locate a copy of the proposed agreement and how and where the user might make their views known to the WSE)
- of the terms of the legislation including, but not limited to, that the final agreements are deemed.

Publication of the first agreement should also come with an obligation to communicate with all users advising where the published agreement can be found.

Recommendations:

That the Select Committee

15. **Amend clause 22 (the proposed clause 279) to clarify that service agreements are deemed or implied and do not require the signature of both parties.**
16. **Amend the Bill by adding further requirements for communication during engagement on the first/transitional service agreements with those who will be liable to pay WSE charges.**
17. **Amend the Bill to by adding a requirement to notify in writing those who will become liable to pay WSE charges as to where they can find the first/transitional service agreement.**

10. Funding and charging

Links with the funding and pricing plan

WDC supports the provisions in the Water Services Entities Act requiring WSEs to produce a funding and pricing plan. It mirrors the financial management requirements that local authorities are placed under with financial strategies and revenue and financing policies. However, there is a disconnect between the funding and pricing plans and the WSEs ability to set charges in clause 22, proposed new sections 330 and 331 of the Bill. There is no obligation on the WSEs to set their charges in accordance with their funding and pricing plans.

Recommendations:

That the Select Committee

18. **That the Select Committee add a provision which requires water services entities to set charges in a manner consistent with the current funding and pricing plan.**

Cross-subsidisation

Clause 22, proposed new section 334, allows WSEs to charge geographically averaged charges. This empowers WSEs to spread the cost of investment in one area across the whole region. This could have particularly significant impacts in Entity D, which WDC sits in, as this covers the majority of the South Island. Investment by different Councils across the entity will vary greatly and communities where Councils have invested well up to this point may have to fund areas with poorer investment. This is likely to occur in the short to medium term.

We agree with C4LD that where cross-subsidisation occurs, that the WSE be required to be transparent to water consumers in its region that this is occurring and why.

[2] Minister of Local Government (2021), Cabinet Paper: Policy proposals for three waters services delivery legislative settings, page 26 (para 124).

Recommendations:

That the Select Committee

19. **Amend the Bill to include a provision that in proposed new section 334 that WSEs must publish information for water consumers explaining that cross-subsidisation is occurring and why.**

The interim funding arrangements impede the objectives of water reform

The Bill allows for WSE charges to be collected by local authorities for up to five years after the establishment date (1 July 2029. We do not believe that this was the original intent of Cabinet, nor has it been discussed in any further Cabinet paper.

WDC supports Taituarā's submission that:

The Select Committee needs to send the WSEs a clear message in this Bill that they will be expected to stand on their own feet on establishment. And if there is merit in local authorities acting as the collection agents for the entities then the legislation needs to clarify that the assessment and invoicing of WSE charges must be on a separate document and clearly distinguished as coming from the WSE.

The Bill allows for the Chief Executive of the WSE and the relevant local authorities to agree upon a collection agreement. The costs might include postal and mailhouse costs, salaries of those answering queries or other administration such as reading meters. Where agreement cannot be reached then clause 336 requires that matter must be referred to the Minister for a binding decision within 28 days.

The provision/provisions most likely to give rise to such a dispute will be those around a fee for collection. The Bill should explicitly provide for an agreement on collection costs, and a requirement that any Ministerial determination provide for collection costs.

Recommendations:

That the Select Committee

20. **Amend the Bill to require the entity to levy stormwater charges from establishment date.**
21. **If the Select Committee rejects recommendation 21 then it clarify that the payment of a WSE levy is an activity for the purposes of the Local Government Act, and clarify how the levy is to be treated in the next long-term plan.**
22. **Include a provision in the Bill ensuring that WSE charges are assessed and invoiced on a separate document.**
23. **Amend clause 22 by changing the proposed section 336 to require the Minister to make a determination as to the amount of collection of costs where this is one of the matters referred to the Minister.**

A partial rating exemption for the WSEs is unjustified

It is strange that WSEs are treated differently in this Bill than energy and telecommunications suppliers, who are liable for rates on the network elements of their assets (e.g. powerlines). Unlike those entities, this Bill in clause 342 establishes that the WSEs are not liable for rates in respect of any reticulation that run through property the WSE does not own, and any assets on land the WSE does not own. This is contrary to the sentiments expressed at paragraph 160 of the Cabinet paper Pricing and funding for three water services notes *"the intention of the reforms is that water services are fully funded."*

The assets exempted from rates are still rating units (i.e. property for rating purposes) and must be valued and placed on the DVR. Threfore, local authorities will be required to value assets they don't rate.

Recommendation:

That the Select Committee

24. **Delete the proposed new section 342 from clause 22, and delete clause 63 completely, thus making the entities fully rateable**

The cost of preparing rating information should be shared

The Bill as currently drafted requires local authorities to subsidise the operating costs of the WSEs by providing tax free information. WSEs will be making use of the information in District Valuation Rolls (DVRs), without being required to contribute to the preparation of the DVRs.

There is a statutory formula for sharing the cost of preparing the DVR where the different parties are unable to agree on an alternative. Section 43 of the Rating Valuations Act 1998 provides for the division of the costs of preparing the DVR based on the proportion of revenue collected using the information.

Recommendation

That the Select Committee

25. **Amend clause 22 by adding a provision to the proposed section 319 that both requires the water services entities to contribute to the cost of preparing district valuation rolls, and provides a formula for apportioning costs where parties cannot agree and is based on section 43 of the Rating Valuations Act 1998.**

Should powers to waive debt be completely unfettered?

As Clause 326 currently stands, the Chief Executive of the WSE has the power to waive payment for charges that any user faces. While this is a sensible clause that is reflected in local authorities' rates remission and postponement powers, it is completely open to the Chief Executive's discretion.

The Bill would be strengthened by requiring the WSE to prepare a formal policy on the waiver of debt, and publish this in a similar manner to the funding and pricing plan. A model for this is the revision and postponement policy provisions in sections 109 and 110 of the Local Government Act 2002.

Recommendations:

That the Select Committee

26. **Amend clause 22 (the proposed section 326) by adding the words "subject to any operative policy that the entity has on the waiver of debt."**
27. **Amend clause 22 (the proposed section 326) by requiring that waiver policies must be published on an internet site maintained by the local authority.**

The Crown's exempting itself from infrastructure connection charges is an unwelcome subsidy from the water user

LGNZ had noted that:

"Under clause 348, the Crown is exempt from paying water infrastructure contribution charges. This is a concern, as Crown agencies are often major developers and can exacerbate issues that are the responsibility of the WSE (or local council). Such an exemption should be something that the Crown applies for and needs to justify. This application should reference the benefits derived for a particular community from such a Crown project – and those benefits need to be sufficient to justify the associated water services-related costs that will be borne by all consumers across the WSE service area."

The C4LD supports this and WDC agrees.

Recommendation:

That the Select Committee

28. **Delete the proposed section 348 from clause 22 making the Crown liable for infrastructure connection charges.**

11. Director of Compliance and Enforcement

Clause 22 of the Water Services Bill inserts a new section 351 requiring WSEs to appoint an employee of the WSE as Director of Compliance and Enforcement. New section 353 requires this Director to act independently when performing their functions.

Independence requires two attributes: First, a person must be independent of the entity that is being regulated; and second, that person must be perceived by outside parties to be independent. A director appointed under proposed section 351 will be neither.

The clause should be redrafted to require the Director to be legally independent of a WSE, i.e. there should be no employment relationship or other form of remuneration funded by a WSE.

Recommendation:

That the Select Committee

29. **Amend Clause 22 (the proposed section 351) to require the Director of Compliance and Enforcement to be legally independent of a WSE.**

12. Transfers of undertakings

A smooth and well-managed transfer process is vital to the overall success of the reform process. The transfer of assets revenue and debts will determine the long-run service and financial sustainability of the WSEs, and of the legacy the reform process leaves local authorities.

The Minister is afforded too much discretion in making amendments to the allocation schedules

We support the provision that the establishment CE must consult with local authority and other local government organisation when developing the allocation schedule (what will transfer to the WSE), including the supply of a draft.

We do not support the second obligation that the Minister must approve each allocation schedule, with a broad discretion in making approval.

There's also no requirement as to any obligation to engage with the WSE or the constituent local authorities when making the decision. The allocation schedule is a fundamental for the WSEs and local authorities. With debts particularly, a Ministerial judgement now might create a long-term fiscal problem for local authorities. Judgements made by the Minister should be forwarded to local authorities for comment.

Recommendation:

That the Select Committee

30. **Amend clause 40(2), schedule 1 to require that any Ministerial amendments to the allocation schedules submitted under clause 40(1), schedule 1 be forwarded to local authorities for comment within 14 days of receipt.**

Transfer of assets

New clause 43 of new Part 2 of Schedule 1 of the Bill provides for the vesting in the new WSEs of all council-owned Three Waters assets. This clause gives effect to the expropriation of council assets.

This clause should be accompanied by a further clause requiring the Crown to pay compensation to councils for the expropriated assets. This is consistent with accepted procedure for the taking by the Crown of property owned by another legal person.

Recommendation:

That the Select Committee

31. **Include a further sub-clause to new Part 2 of Schedule 1, clause 43, requiring the Crown to pay compensation to councils for the expropriated assets.**

Non-water services organisations

The Bill adds six provisions that specifically relate to the transfer of assets owned by local government organisations. In the context of water legislation the definition of local government organisation includes any local authority, council-controlled organisation (CCO) (or subsidiary of a CCO). We are concerned that this may capture council-controlled organisations whose primary purpose is civil construction road and maintenance businesses, who also provide reticulation services such as renewals, as well as those who provide water services as their core function. It is disappointing that there is a perceived change in direction regarding CCOs. Our CCO Westroads Ltd operates as a "ServiceCo", which provides a range of different services to WDC and other councils.

Westland District Council, through our CCO Westland Holdings Ltd, is the only shareholder in Westroads Ltd, a CCO whose business model is a civil contractor with 3 waters work on the West Coast, and operates as Trenching Dynamix, a 3 waters construction company based in Canterbury. Our understanding was that only existing water service contracts between the CCO and the Council would be taken on by the WSE, however, the legislation as it stands appears to capture the entire business. This would have serious consequences for Westland District Council, our CCOs and our ratepayers.

In 2021/2022 Westroads Ltd employed 127 FTE staff, many of whose roles are not solely confined to 3 waters related activities. If both parts of the company are included approximately $3.8 million assets are dedicated to 3 waters.

Any transfer of staff and assets from Westroads Ltd to the WSE will impact WDC, and consequently ratepayers. Westroads Ltd, as a commercial CCO, is a source of revenue for council, the dividends received from Westroads Ltd are used to offset approximately 3.5% of the general rates borne by council's ratepayers. If Council does not receive this dividend, because the CCO has been transferred to the WSE, rates will need to be increased to offset the loss. Removal of the 3 waters functions will also impact the business model of the Westroads Ltd, with overheads being reallocated to the remaining functions, which will increase prices and impact on the ability to tender competitively. Ratepayers and any other users of the service will bear the additional costs. The result would be that Westroads Ltd would take a substantial amount of time to adjust to the removal of 40% of its business and it may require additional capital from its shareholder.

WDC does not believe that the intent of the legislation was to include council-controlled organisations whose primary purpose is not water services. There was no previous reference to Westroads Ltd or Westland Holdings Ltd being included in any previous workshops, scoping documents, RFI requests, or other information.

From the outset councils (and their ratepayers) have been advised they would be compensated to ensure they were no worse off at the conclusion of the 3 Waters Reform. The inclusion of CCOs into the Bill came after the no-worse off funding (capped at $250M) was allocated. As there are 21 CCOs tied up into the transfer that this figure needs to be increased significantly. Westroads Ltd is currently a very viable business that has a resale value to council in the 10's of millions. Prior to the CCO's inclusion into the transfer council could have sold the business and made a handsome profit. This is now in jeopardy and there will be a significant reduction in future earnings.

The work required to unbundle the complexities of CCOs that are not solely allocated to 3 Waters is immense and will probably be significantly harder than direct council transfers. Their data set, IT systems, asset information (they will not have Asset Management Plans), HR practices/contacts (and potentially unions), Health and Safety processes and practises, among other things, will not be consistent across the country. They also leverage other parts of their business to support 3 waters – for example, because Westland geography is long and thin (400km north to south) with 9 waters plants our CCO Westroads Ltd use other parts of their business to support the water contract requirements – i.e. taking samples, emergency works, civil defence duties.

As outlined above Westroads Ltd provides a range of services to a number of public and private bodies. As this proposal has been widely telegraphed to Councils who Westroads Ltd have as clients we are now in the position of partner-Councils raising concerns about risk to their own services from this proposal. Particularly those who do not have a CCO but have contracted Westroads Ltd to deliver their public facing services. There has been a consequent reduction in confidence which has commercial implications.

The doubt created by this proposal will impact on Westroads Ltd's ability to be successful in tendering in the market place and puts them at material disadvantage in the market. We will need to assess what legal remedies may be available to CCO's given how this matter has been handled.

We understand from the Draft Transfer Principles that:

a. *'The primary objective of the transfer process is to ensure WSEs have the assets, liabilities, and other matters they need to operate Water Services effectively from the Establishment Date without adversely impacting service to consumers or the ability of LGOs to provide non-water services to their communities.'* (Emphasis added).

This statement suggests a transfer of assets should not take place where there is an adverse impact on the ability of a local government organisation to provide non-water services to their communities. Were water related staff and assets to be transferred from Westroads Ltd to the WSE this **would** adversely impact service to consumers and the CCO's ability to provide non-water services to the community.

In the absence of a CEO being appointed to Entity D, we are unable to clarify this issue directly with them, which puts WDC at a disadvantage. Without a WSE CEO in place to provide clear direction, WDC has to continue on the basis that the impacts on Westroads Ltd will eventuate. Until an allocation schedule is requested from Westroads Ltd or provided by the NTU WDC cannot determine what staff and assets are in or out of scope and what the full impact will be.

Recommendation

That the Select Committee

32. **Seek advice as to whether the term local government organisation includes council-controlled organisations providing civil construction services.**
33. **If the reform is to proceed in current form, with ServiceCos being treated as a local government organisation, then the Bill should be amended because it does not clearly contemplate a contract between two local government organisations. This means it does not accommodate the existing ServiceCo contract, which is between a council and a ServiceCo. This could be done through amendments to the proposed new clause 52 of Schedule 1 to the principal Act.**
34. **If the reform is to proceed in its current form the 'better off funding' from the Crown will need to fully compensate councils and the relevant CCOs for the transfers and their consequential impact.**
35. **The definition of a local government organisation in Schedule 1, Part 1, cl 1 of the principal Act should and can be drafted to carve a balanced distinction between a true ServiceCo and a CCO that provides water services as a core function. By removing ServiceCos from the definition of local government organisation, clause 49 of schedule 1 to the Bill can be used to transfer specific assets if all interested parties agree it is desirable.**

Mixed-shareholder CCOs

The definition of a "mixed-shareholder CCO" in the primary legislation currently captures any CCO with a mixed shareholding, regardless of whether it provides water services. To provide certainty and reduce unnecessary effort, we think a mixed shareholder CCO must also be a local government organisation, which would limit the definition to CCOs that provide water.

To be classified as a mixed-shareholder CCO under the primary legislation, one or more of the CCO's shareholders must be a local government organisation. To be classified as a local government organisation, that shareholder must provide water services. By definition, a local government organisation would therefore exclude a wholly council-owned holding company (i.e. a company whose only purpose is holding shares in the relevant subsidiary, such as

Westland Holdings Ltd), as they do not provide water services. Therefore, if a council chooses to own its share of a CCO through a holding company, that CCO could not be classified as a mixed-shareholder CCO, even if it had some third party ownership. Conversely, if the CCO does not satisfy the definition of a mixed-shareholder CCO, its assets, liabilities, other matters and staff will all be subject to the full transfer provisions. As the policy intention behind the mixed-shareholder CCO definition appears to aim at protecting the third party owner, we assume this exclusion is an oversight.

Recommendation

That the Select Committee

36. **Amend Schedule 1, proposed new clause 45, to clarify that a mixed shareholder CCO must also be a local government organisation, thereby limiting the definition to CCOs that provide water.**

13. Long Term Planning

The Water Services Entities Act amended the Local Government Act to clarify how Councils should treat three waters when preparing their Long Term Plans, amendments to Long Term Plans, Financial Strategies and Infrastructure Strategies during the establishment period. We support the intent of this part of the legislation.

However, including LTP amendments until in the period prior to 1 July 2024 could cause difficulties for local authorities. Any local authority that needs to make an LTP amendment during this time will have to remove the three waters information from their forecast financial statements. Councils will be forced to make assumptions that could be fiscally irresponsible for their ratepayers.

Local authorities retain the policy and operational responsibility for three waters services up to 1 July 2024. That includes the delivery of maintenance, renewal and replacement programmes in the asset management plans in the interim. This means local authorities will need to rate for three waters services in the 2023/24 financial year, and show that in the financial information for the year. This creates a disconnect with the relevant LTP information.

Recommendation

That the Select Committee

37. **Amend clause 27, schedule 1AA of the Local Government Act 2002 to exclude amendments to the 2021/31 long-term plans thus ensuring local authorities are able to demonstrate accountability to the community and manage the financial consequences of their delivery of water services to 30 June 2024.**

Taituarā's recommendations from their earlier submission about the removal of water services and aspects of the 2024 LTPs.

WDC agrees with Taituarā's comments about the validity of the Infrastructure Strategy and Financial Strategy in their current form once the three waters activity has been removed from Long Term Planning documents.

Their position is set out in recommendations 55 – 57 of their submission to the Water Services Entities Bill: wider amendments to the content of financial and infrastructure strategies, and to the complete removal of powers to set non-financial performance measures for roads and flood protection.

Recommendation:

That the Select Committee

38. **That the Committee enact recommendations 55 to 57 of the Taituarā submission on the Water Services Entities Bill relating to the content of financial and infrastructure strategies and the repeal of powers to make non-financial performance measures.**

14. Conclusion

We thank the Select Committee for their time in reading our submission.

We reiterate that we have concerns that the legislation does not meet the intent of the reforms, and in the case of CCOs will cause great harm. We consider that it would be best to pause at this time to allow for further consideration of the reform progamme and how to meet the goals of the programme.

If the Select Committee does continue with the Bill, we hope that the recommendations of C4LD and Taituarā, which we support, are taken into consideration.

WDC does wish to appear before the Select Committee to speak to its submission.

Simon Bastion, Chief Executive and Helen Lash, Westland District Mayor.

Ngā mihi nui,

Simon Bastion, Chief Executive

Helen Lash, Westland District Mayor

Scott Baxendale, Group Manager: District Assets