

// **SUBMISSION**



Local Government (Water Services Preliminary Arrangements) Bill

// Local Government New Zealand's submission

// June 2024





Ko Tātou LGNZ.

LGNZ champions, connects and supports local government. We represent the national interests of councils. Our aim is for New Zealand to be the most active and inclusive local democracy in the world.

Introduction

Local government agrees that how we deliver water services (drinking, wastewater and stormwater) to New Zealanders must improve. Broader system issues have created longstanding challenges, which are negatively affecting many communities now and will affect even more in the future. LGNZ's members want better outcomes for communities through water services reform, and for this reform to give councils longer term clarity and certainty. But councils have diverse views on what reform should look like and what it means for their communities, as the Committee will hear directly from councils. These views should be respected and provided for.

We've focused on areas where the Government's model and approach can be improved in response to local government's commonly held concerns. To provide greater clarity and certainty for councils, we want this legislation (and the further legislation yet to be introduced) to be as workable as possible.

Developing a fulsome response to this Bill has been challenging for two reasons: key details of the Government's complete approach to water reform will not be known until further legislation is introduced later in the year, and the timeframe for submitting on this Bill has been exceptionally short.

We are also aware of the proposed amendment to this bill that the Minister is proposing to make at the committee of the whole house stage of this bill which would prevent Taumata Arowai from having regard to the hierarchy of obligations in the NPS Freshwater Management when developing wastewater environmental performance standards. It is concerning that this change was not part of this bill as introduced which has prevented councils from engaging with this proposal as part of the select committee process.

Key points in our submission

- Timeframes for developing Water Service Delivery Plans should be extended.
- The Bill needs to be clearer on the requirements for demonstrating financial sustainability.
- In some limited cases intervention by the Minister may be necessary, however, this should be a last resort and the risk of it being required should be minimised with the provision of strong upfront support including guidance and direct funding.
- Water Service Delivery Plans should cover a longer-term timeframe given the matters they must consider.
- The development of Water Service Delivery Plans needs to be better integrated with other council planning processes.
- The Secretary should be required to consider and advise on Water Service Delivery Plans in a timely manner.
- We support the streamlining provisions for creating Water Services CCOs, but suggest that the streamlined process should also be available for other options.

Our submission

Water Services Delivery Plans

Timeframes for developing Water Service Delivery Plans should be extended

While a significant amount of the required content will already be available to councils, developing, documenting and adopting Water Service Delivery Plans (WSDPs) will be a significant undertaking. These new plans will be pivotal to successful implementation of *Local Water Done Well*, so the legislation must provide a workable approval process. The current one-year timeframe for developing and adopting a WSDP (from the date of enactment) risks undermining this for three main reasons.

First, many necessary elements of the surrounding policy framework are not yet known, and will only be known later in the year following the introduction of further legislation. This includes detail on what is required to demonstrate long-term financial sustainability, and further detail of the powers and governance framework for the new classes of Water Service Council-Controlled Organisations and other service delivery models (if they are to be legislated).

Second, developing these plans will take time and require specialist skills and knowledge, in an environment where councils are already resource constrained. Councils may require more time to develop their plans, given current workloads and resourcing (and the overlap with Future Development Strategies, Annual and Long-term plans). As all WSDPs are being delivered in the same timeframe, access to specialist external resource will be constrained. While many councils will have up-to-date base information (such as asset management plans and financial projections) from the development of their 2024/35 Long-Term Plans (LTP), the 12 councils that have deferred their LTPs by 12 months will find development of LTPs and WSDPs in parallel particularly challenging. In addition, logically, a WSDP should be adopted ahead of any LTP, as the LTP will need to align with the ring-fenced funding in the WSDP.

Third, for many councils their preferred pathway to financial sustainability lies in voluntary partnership with other councils. One year is a short period of time to agree a sustainable partnership arrangement with other councils and jointly develop a WSDP. This would be particularly complex if one, or more, of those councils are also navigating an LTP process.

While there is an ability to seek extensions to the one-year timeframe, in particular where there are attempts to form a partnership, setting a more realistic timeframe for councils in the first instance will support better outcomes. We encourage the Committee to seek input from local government to understand these practical issues, and identify a more reasonable timeframe for WSDP development.

In addition, the Secretary for Local Government (Secretary) can make rules in relation to WSDPs. Depending on the timing and scope of these rules, there may be material impacts on councils' ability to meet deadlines. The Bill should therefore enable an extension to be granted in circumstances where any new rules could have this impact.

The Bill needs to be clearer on how financial sustainability will be judged in practice

The Bill is unclear on what financial stability/sustainability means in practice. The explanatory note for this Bill notes that the requirements for long-term financial sustainability will be introduced in further legislation. This is unhelpful as the deadline for WSDPs will mean councils consulting on their proposed WSDPs while this further legislation is progressing through the house.

The Bill defines financial sustainability as revenue being sufficient to ensure long-term investment in delivering water services and being financially able to meet all regulatory standards and other requirements for water services. There is also no explicit requirement to consider whether – in demonstrating financial sustainability – the approach will remain affordable for consumers and ratepayers.

Successful WSDPs are required to demonstrate public commitment to financial sustainability. This requirement is ambiguous and would benefit from additional explanation. However, given that the plan requires detailed information for its first three years, it is implied that public demonstration would be required for these three years. In addition to this requirement, councils, as part of WSDPs, must explain how they propose to ensure that the delivery of water services will be financially sustainable by 30 June 2028.

These two elements create a de facto deadline to reach financial sustainability for water services by 30 June 2028. This deadline seems arbitrary and is likely to pose a significant challenges for some councils. Achieving this deadline may also create significant affordability pressures, and could undermine genuine long-term sustainability (for example, through increased strategic investment in the short term). We suggest the rationale for this date be clarified, noting that the delivery options for most councils are yet to be determined (which could have a bearing on efficiencies), and the longer-term requirements for financial sustainability will not be known until the introduction of further legislation.

Intervention may be necessary – but upfront support is essential

We acknowledge the need to provide for the appointment of a Crown Facilitator for WSDPs or a Crown Water Specialist that would respectively support councils in reaching agreements for joint arrangements or to develop and submit WSDPs.

However, Crown intervention should be a last resort. To reduce the need for intervention, and to support better locally led outcomes, councils should be given timely support for the WSDPs as soon as possible. This could involve the provision of guidance, templates and information as well as support for building partnership. Facilitation of access to expertise could also be helpful. There could also be an ability for councils to submit a draft WSDP for initial review – similar to current practice at the consultation stage of the current audit of the LTP.

Many councils disagree with the Regulatory Impact Statement's assessment of the amount of work required to develop a WSDP. As well as the direct costs involved in developing these plans, as mentioned earlier there will probably be limited external resource available to help and, as a result, costs will increase. Setting up a CCO will also add currently unbudgeted costs. Given that councils are well advanced in developing Long-Term Plans, there are limited opportunities to accommodate these additional requirements in councils' budgets. To offset this, councils should have access to direct funding from government to address the new costs this legislation will impose.

The time horizon of WSDPs should be extended

Water services infrastructure and assets provide critical, long-life networks, and planning for them should be over a period greater than the prescribed 10 years. The focus of WSDPs seems to be on current state, but the content should require greater consideration of future risks and challenges. A number of these risks and challenges, such as the impacts of climate change, impact on financial sustainability but play out over a longer period of time. In order to fulfil their purpose, these plans need to be upfront about those challenges.

It is for these reasons that the interrelated Infrastructure Strategies and Future Development Strategies (FDSs) both have timeframes of at least 30 years, with FDSs needing to plan for long-term development capacity (10-30 years) supported by the infrastructure identified in a council's Infrastructure Strategy. It would still make sense for the requirements to demonstrate financial sustainability (and the financial information required) to remain aligned with the 10-year period covered by the Financial Strategy of councils.

Clause 8 of the Bill states that the purpose of a WSDP is to support a council's housing growth and urban development, as specified in the LTP (and by extension the FDS – given that it is the relevant housing growth document). Aligning the timeframes appears sensible. We note that clause 11(1)(c)(ii) also refers to population growth and development capacity, which links back to the wording in the NPS-UD (and requirements for an FDS).

If the timeframe is not extended, at least for the planning of infrastructure delivery, or the requirements are too focused on the short term, then the required public commitment to true financial sustainability may be hard to judge from these documents. We would support extending the period WSDPs cover, and explicitly requiring them to focus on both the current and future risks as expected by the Local Government Act 2002 (LGA).

The development of the WSDP needs to be better integrated with other council processes

There is more that should be done to integrate and streamline interrelated processes of councils (such as LTP/annual plan processes and the Future Development Strategy development and review) with the WSDP process. Practically speaking, council staff who would play key roles in the development of the WSDP are likely to be involved in development of these other plans and strategies. There is further thought required on how to streamline requirements to minimise these impacts. For example, there could be a requirement that FDSs (where required) are developed in tandem/concurrently with WSDPs. In practice, developers and other interested parties would submit on both, so developing them at the same time would enable decisions to be made in parallel. These eventual FDSs and WSDPs would then inform the LTP/ P processes that follow, supporting a more integrated outcome.

Some councils may choose to consult on their WSDP as part of their Annual Plan consultation process. To support this, it would be useful if clause 15 explicitly enabled this approach.

The Secretary should be required to consider and advise on WSDPs in a timely manner

As currently drafted, the Bill doesn't prescribe any timeframe for when the Secretary for Local Government must decide on a WSDP once it is lodged. The legislation should set a requirement, and suggest two months as an appropriate timeframe to review and make decisions on these plans.

We support the streamlining provisions for creating Water Services CCO

We support the provisions that streamline the process for establishing a Water Services CCO (WSSCO). However, given the stated desire to support local choice, it is not clear why the Bill takes this approach for WSSCOs only. It is not applied to other vehicles or options that can also viably deliver water services, such as council-owned companies, trusts, Incorporated Societies, shared services contracts, or joint local government arrangements.

While we support the Bill's intentions in this area, we consider streamlining should be available for other options, which councils may determine better meet local preferences and requirements. The proposed modifications to the Part 6, LGA requirements should apply in any situation where a council is proposing to establish a new vehicle for its water services (jointly, or otherwise).

The explanatory note for this Bill states that further legislation will provide a new class of Water Services Council-Controlled Organisations. Making decisions on which vehicle is best for any water service delivery approach is complicated by the lack of this detail now.

The Bill does not extend these provisions to Regional Councils, when some councils like Greater Wellington Regional Council play a role in water delivery, and this should be considered.

Additional matters

Stormwater networks should be more precisely defined

A number of councils have raised concerns about the proposed definition of stormwater network in the Bill. The Bill is unclear in its treatment of those aspects of the stormwater network outside the piped network.

We request that the committee engage directly with these councils and Water NZ to ensure this definition is fit for purpose. We understand that Water NZ's preference is that the definition in the Water Services Act 2021 be used instead:

stormwater network—

(a) means the infrastructure and processes that—

(i) are used to collect, treat, drain, store, reuse, or discharge stormwater in an urban area; and

(ii) are owned or operated by, for, or on behalf of one of the following:

(A) a local authority, council-controlled organisation, or subsidiary of a council-controlled organisation;

(B) a department;

(C) the New Zealand Defence Force; and

(b) includes—

(i) an overland flow path;

(ii) green water services infrastructure that delivers stormwater services;

(iii) watercourses that are part of, or related to, the infrastructure described in paragraph (a)



The secretary should be required to consult all affected councils when setting rules

Clause 14(3) requires that the Secretary of Local Government when setting rules in relation to WSDPs to consult *'each person or organisation that the Secretary considers to hold views that are representative of the views held, or that may be held, in the local government sector'*. These rules could have some impact, and anyone affected should be consulted, with a reasonable timeframe allowed for this consultation. This would be consistent with the process for when the Secretary must make rules specifying performance measures (LGA s261B), which requires the Secretary to *inter alia* *'consult every local authority'* and *'give interested persons a reasonable time ... to make submissions on the proposal'*.