

Three Waters Reform submission to Select Committee – Hastings District Council

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1 Introduction

1. Following the Havelock North water contamination event of 2016, the New Zealand Government embarked on a major programme of reform of the delivery and regulation of three waters services in New Zealand.
2. Council has fully supported the introduction of the new regulator (Taumata Arowai) and the need for updated standards and regulation, and Council will continue to work proactively with Taumata Arowai as it continues to develop.
3. Council agrees that the status quo for supply of 3W services is not a viable service model for our community. There is a compelling case for change to ensure ongoing safe, effective, efficient, and affordable 3W service delivery.
4. Council is committed to working consultatively, transparently and in good faith with Government, the Collective of Hawkes Bay Territorial Authorities (HBTA's), Iwi and our Community to transition to a future 3W Service Delivery Model that best meets the needs of our community for current and future generations.
5. In fact, the HBTAs developed a regional model (Hawkes Bay Model) in response to the 2016 Havelock North incident, to address the issues that Government is attempting to address in this reform. The Hawkes Bay Model provides for co-governance with mana whenua, while gaining economies of scale to address investment shortfalls, and having a competency-based board. Unlike the Government model, the regional model allows for local representation and accountability, while providing opportunity for community input.
6. Hastings District Council has been co-governing wastewater with our mana whenua for decades, we have led the way, demonstrating that co-governance is not only possible, but can lead to better outcomes and leading practice in the industry. It is unclear how this co-governance committee would continue to operate under the proposed changes.
7. For these reasons, Hastings District Council, along with all of the Hawke's Bay councils, maintains that **the regional model should be reconsidered.**
8. While Council supports the need for change, **we do not support the Water Services Entities Bill in its current format.** We are concerned the Bill does not address issues around community representation in governance. Specifically, a lack of opportunity for our communities to have a meaningful say in decision-making, which would likely lead to investment priorities not reflecting what our community needs.
9. We are concerned that the Government has not consulted the wider community and helped the households and businesses across the country to understand the case for change, and the approach and what government is doing to manage their concerns. In our previous submissions we have highlighted the need for central government to bring the community along on the journey, and we do not feel this has been done. We have been working with our community to make sure everyone who wants to engage is as informed as possible – for example, helping them understand that this Bill is in the Select Committee process and what that means. But the very fact we have had to work with our communities to empower them, demonstrates that the Government continues to fail to engage with households and businesses properly on these reform initiatives.

10. We have serious concerns about the timing and lack of clear integration of this Bill with the wider central government reform agenda (i.e. RMA reforms, local government reforms), and the other related water service entity reform legislation programme. This lack of integration means there is little clarity about how WSEs will participate in, and be held accountable for, planning processes and regulatory changes. The proposed spatial planning act may be the critical part to provide more confidence that the WSEs are required to deliver to an agreed plan, but at present there is no clear integrated vision to demonstrate this is the expected direction. There is also no sign of interim/transition arrangements to hold the WSEs to account for delivering services to accommodate growth, whilst the new requirements are developed. We consider it challenging to provide input into this first Bill without more clarity on the wide range of critical parts that will need to be included in the second Bill. We ask that the select committee considers whether it can proceed with this first piece of legislation prior to having confidence that the 2nd Bill will provide both a workable solution and be able to deliver upon the objectives being set by government, let alone met the needs of the communities directly affected.
11. We consider the use of the definition of Te Mana o te Wai directly from the National Policy Statement for Freshwater has its shortcomings. The NPS definition limits the scope of what is covered by the statements and responses to freshwater bodies, and we are concerned this may lead to a less than ideal outcome around coastal waters.
12. We also have concerns over the transition process and the challenges it presents to councils in continuing to provide safe and reliable 3 Waters services in the establishment period.

1.1 Objectives & principles

13. Following the 2016 incident, the Hawkes Bay councils undertook the first regional study on options for three waters service delivery. The review concluded that the status quo was not an option, but instead recommended the Hawkes Bay Model.
14. We still believe the status quo is not an option, and we still believe and are committed to the objectives and principles that guided the Hawke's Bay review:
 - six investment objectives developed and agreed through a series of workshops with council leaders, employees, and Māori committee representatives
 - principles developed through engagement with the Māori committees

Investment objectives		Principles	
To provide three water services in a way that is affordable and effective	 The three waters service's model must address the challenge of providing for an effective, affordable service in a fiscally responsible way.	Value Te Ao Māori	Incorporating and implementing mātauranga Māori, culture and values (i.e. Te Aranga Design Principles) are a core element for any potential framework to realise and enhance the region's commitment to Māori to protecting/enhancing water.
To provide services that are safe, reliable and resilient	 Access to safe and reliable three waters services are fundamental to all the urban and rural communities of Hawke's Bay.	Value water	Wai is the essence of all life and the world's most precious resource. It is of high importance to Māori, as it is the life giver of all things, a precious taonga, part of our whakapapa.
To provide services through a model that enables a meaningful role for Māori	 The Local Government Act requires a local authority to provide opportunities for Māori to contribute to its decision making processes.	Whakapapa – genealogical links	Recognise and respect the relationship and whakapapa (genealogical link) that mana whenua has with water.
To provide services through a model that has the value of water at the centre	 Water is vital to community life and as such three water services are part of a holistic water system.	Te mauri o te wai – the life force of water	Mauri is the integrated and holistic well-being and life support capacity of water. The well-being/healthiness of the water, the land and the people are intrinsically connected.
To provide three waters services in a way that supports our urban and rural communities	 The services influence how people across Hawke's Bay live, work, gather, socialise, recreate and value environmental amenity.	Holistic approach to water	Although the project is based around the review of the service and delivery of the three waters (infrastructure), the proposed model needs to take into account a holistic water approach: there is only one water.
To provide three waters services that build enduring capability and capacity	 The three waters model must be capable of, and have the capacity to, deliver quality sustainable planning, management and operation of three water services now and into the future.	Enabling of Te Tiriti o Waitangi	Involving mana whenua in governance and decision making required to ensure Te tiriti o Waitangi obligations are met, as well as making sure they are able to actively exercise kaitiakitanga in a practical way.
		Mana motuhake - identity, self-determination	The identity of mana whenua in Hawke's Bay should not be lost in any potential model. But inclusion and co-governance whilst keeping their identity is an opportunity.

15. These objectives and principles are the drivers behind the feedback on the specific issues in the following sections of the submission.

16. There are many areas of alignment of these principles and objectives between the Hawkes Bay Model and the government proposal (for example, co-governance, spreading of costs across wider area, separate competency based boards). However the significant area of difference and concern remains with the scale proposed by the 4 entities and the ability to be locally accountable when the area covered by the entities are so wide and diverse. This Bill, as it is written, does not ameliorate these concerns.

17. We support the need for change, but consider that co-governance with our regional mana whenua, with true accountability to our local communities, will only be realized under the Hawkes Bay Model, not the proposed structure.

1.2 Other Submissions on the Bill

18. We strongly support the submissions from Taituara and LGNZ on the Bill. We would particularly like to draw attention to the feedback from Taituara on:

- The Government Policy Statement. We question the need for the GPS to apply directly to the WSEs when there is no specific funding from the Government that needs to be directed by the GPS. A GPS may be more appropriately used to require other stakeholders in the sector, and across government entities, to conform to the policies the WSEs are already required to comply with under the Bill.
- This first Bill covers the simpler parts of the reforms, the second Bill is likely to have the detail that is more contentious and tricky to implement. We consider that providing feedback on this first Bill without knowing the details of the second Bill, is not ideal. We consider the second Bill should be released before the first Bill ascends to allow feedback on the whole package. This will ensure any gaps or discrepancies can be addressed.

19. We would also like to draw attention to the feedback from LGNZ on:
 - The local voice must not be compromised by centralisation, the proposal should not leave communities worse off in terms of the influence they have under the current system.
 - The protections against privatisation have been strengthened after previous feedback, and we support this strengthening. We also support the recommendation to strengthen the protections by requiring cross-party political support for entrenchment.
20. Hastings District Council has also jointly submitted alongside its Hawkes Bay regional council partners with a joint Hawkes Bay submission.

2 Our Specific Concerns

21. In addition to the issues raised in the Taituara and LGNZ submissions, we have some specific concerns with drafting and structure of the Bill that we believe present challenges to the Hastings community. They are outlined in the following sections.

2.1 Local Accountability

22. Council believes that access to safe and reliable three waters services are fundamental to all the urban and rural communities of Hawke's Bay, and that to ensure this access, all the communities must be represented in the governance of the service provider. Council is concerned that the community will not get sufficient representation in the governance of the service provider under the proposed arrangement, and that this could lead to a slowdown in investment in some communities' infrastructure and an associated plateauing or decrease in the level of service. The following sections outline our concerns about local accountability in more detail, including our recommendations.

2.1.1 Governance Structure

23. The proposed Bill outlines the community representation in the governance structure. We have two concerns about the structure; firstly, the how representative the governance will be in terms of diversity of the communities; and secondly, how many governance layers there are between the communities and the decision-makers.
24. **Firstly**, the Bill allows for a maximum of 7 members of a Regional Representation Group (RRG) to represent the Territorial Authorities (TAs) in each entity. Entity C has 21 Territorial Authorities that will share this representation.
25. The Bill does not outline any selection method for the members of the RRG, or any requirement to ensure there is a mix of TAs represented. For example, there is no protection against scenarios such as the metropolitan councils taking most of the roles and leaving limited or no representation for other areas.
26. The appointment of the members to the RRG will be governed by the constitution of the Entity once it is established. However, the constitution is to be reviewed and amended by the RRG and approved by the Minister. This means the RRG sets its own membership requirements and there is no formal avenue for TAs to challenge the composition of the RRG if it is unrepresentative.

27. **We recommend the RRG composition is specified in the Bill and ensures the RRG is representative of the diversity of TAs in the entity.** For example, the Bill should specify there is representation from metropolitan, regional urban, and rural councils, as well as TAs that represent the geographic and natural diversity of the service area. For example, even though Hastings and Horowhenua District Councils are both regional urban councils, the geographic differences have significant impacts on how water services need to be delivered to meet their communities' needs.
28. **Secondly**, the proposed governance structure has multiple layers of governance between the entity owners (the Territorial Authorities or Councils) and the decision makers. Council is concerned the structure provides the shareholders, and therefore communities, with no influence over how the assets are managed and prioritised.
29. Under the proposed structure, the only decision that all the shareholders can participate in is a veto on the question of privatisation. All investment and prioritisation decisions would be made by the Board and CE. The shareholders and communities would not even be involved in appointing the Board unless they had a representative on the RRG and that representative was then appointed to the Board appointment committee.
30. We are concerned that if a community is dissatisfied with the service they receive there is no avenue for the community to influence the decision-makers through the governance structure. **We recommend the governance structure allows for greater accountability of the decision-makers (the Board and the CE) to all the communities.** This accountability should be more than a reporting mechanism from the entity to the community, but enable a two-way conversation between the shareholders (representing the community) and the entity.

2.1.2 No lowering of investment

31. The Bill does not specify any requirements around prioritisation of investment, rather specifying it will be directed through the strategic direction developed by the RRG. In reality, this will lead to the new entities prioritising investment to address the largest needs.
32. We are concerned this will lead to communities who have invested in their infrastructure over the last few decades, receiving lower priority as their needs are not as great. Indeed these communities with better historical investment, would likely see a plateauing or decrease in the level of service, due to the slowdown in investment in their infrastructure. And with the current governance structure, these communities would have no ability to influence this prioritization.
33. We strongly believe there needs to be mechanisms in place to ensure that investment decisions do not lead to some communities “going backwards” through a lack or delay of investment, while the entity works on “catching up” the other communities.
34. **We recommend there is a stronger feedback mechanism for communities to be heard about their desires for investment in their infrastructure. The WSE should be required to engage with Councils and communities if it proposes to alter service levels provided to communities.** This is particularly so if service levels are proposed to be reduced from a level a community may have previously invested in.

2.2 Links to Council Planning

35. While the Water Services Entities Bill #2 is intended to cover some of the interactions with planning instruments, Council wishes to highlight the gap in the planning process as it stands in this proposed Bill.

36. Council believes the three waters systems in Hastings must be capable of, and have the capacity to, deliver quality sustainable planning, management, and operation of three water services now and into the future. This means the three waters services must be able to supply sustainable growth in the region and tie into the future growth planning process.
37. The National Policy Statement on Urban Development 2020 (NPS-UD) requires local authorities to provide “at least sufficient development capacity” for housing and business land over a 30 year horizon. This development capacity must be both plan-enabled (by a statutory planning instrument) and able to be serviced by infrastructure on a timely basis. This makes the ability to plan and deliver growth-related infrastructure essential to councils in meeting Government requirements under the NPS-UD.
38. There is no obligation on a WSE to service any local authority’s specific growth area identified under NPS-UD, the obligation is only to service growth in general. The WSE must consult on the Infrastructure Plan and Asset Management Plan, and then report on how the consultation was considered, however, the WSE does not have to accommodate the feedback from the consultation.
39. If the Entity does not prioritise infrastructure investment in the area needed by the local authority to meet its requirements under the NPS-UD, the local authority has no ability to influence this prioritisation. Indeed, if a local authority were to attempt to direct the WSE to account for a specific growth area, they would be prevented from doing so by the clause designed to safeguard the independence of the entity. The clause specifies a council specifically cannot direct an entity or employee of an entity to exercise a duty or function under the Act.
40. In Hastings, we face a situation where we have unprecedented levels of growth and the need to invest significantly in infrastructure to provide the required development capacity. We have developed a concept for growth infrastructure investment that will see tens of millions of dollars of investment required for development of capacity in all three waters systems. We are concerned that with the current proposed Bill, the Hastings community may experience this lack of prioritised investment from the larger entity.
41. **We recommend the WSE is required to be an active party in the planning processes to ensure that constraints in three waters systems do not curtail future growth plans or community plans.** The legislation needs to outline the WSEs involvement throughout the planning process to enshrine the previous commitment of the WSEs being “plan-takers” from the TAs when it comes to systems planning. **The WSEs should be required to ‘give effect’ to regional development plans, and should be required to report back on the delivery of these obligations.** They should also be required to continue to deliver upon programmed commitments that Councils have planned for, at least until the new regional spatial plans are in place.

2.3 Te Mana o te Wai Definition

42. Te Mana o te Wai is defined as set out in the National Policy Statement for Freshwater Management. This means that technically, the provisions about Te Mana o te Wai only apply to the freshwater parts of the water cycle, but not coastal waters. This definition means that mana whenua are only able to provide a Te Mana o te Wai statement for water services if their rohe or takiwa includes a freshwater body, not coastal waters.
43. This may impact not only which mana whenua can make statements, but also the extent of the statements themselves. Coastal waters are an important part of wastewater and stormwater services,

and we believe mana whenua of coastal waters should be able to provide a Te Mana o te Wai statement about the impacts to coastal waters not just freshwater.

44. Hastings District Council led the way in developing a co-governance arrangement for wastewater over a decade ago (Tangata Whenua Joint Wastewater Committee). This leading approach was driven by the concern of the impact of wastewater services on coastal waters, and the local mana whenua would definitely want to cover such issues in the Te Mana o te Wai statements.
45. We consider the intention of the legislation is to allow all mana whenua to provide such statements, but the drafting of the definition of Te Mana o te Wai has the unintended consequence of limiting the coverage of the provisions. **We recommend extending the definition of Te Mana o te Wai to include coastal waters would enable the intention of the legislation to be realised.**

2.4 DIA Powers during the Establishment Period

46. During the establishment period, TAs must continue to deliver reliable and safe 3 Waters services. Territorial Authorities (TAs) will have to prioritise business-as-usual to ensure these services continue.
47. Council is concerned some of the provisions of the Bill may compromise TAs ability to provide compliant services, and thus manage TAs' compliance and liability. This is because the Bill provides DIA with powers that may impact on current water suppliers' capacity:
 - Schedule 1 section 23 enables DIA to make a TA decision void if it increases expenditure and is deemed to have significant negative impact on assets, liabilities, or other matters. This may be operating or capital expenditure needed to continue to provide safe and reliable services.
 - Schedule 1 section 11 enables DIA to second TA staff directly without requiring the TA's approval. If the TA needs the staff for business-as-usual, there may be scenarios where this leaves a shortfall in service provision.
48. If there is an incident or non-compliant service in the establishment period caused by under-resourcing of either staff or funding, it is unclear if DIA has any liability for its decisions, or whether the TA is solely liable.
49. We do not believe DIA intends to compromise TAs' ability to keep the water running until the last day. However, **we recommend the legislation requires that when exercising these powers, DIA must take into consideration the TAs' capacity to continue to provide reliable and safe three water services.**

3 Conclusion

50. Council agrees that the status quo for supply of 3W services is not a viable service model for our community. There is a compelling case for change to ensure ongoing safe, efficient, and affordable 3W service delivery. Like the Government, we believe reform of the 3 Waters delivery model is necessary.
51. However, Council does not support the Water Services Entities Bill in its current format. We are concerned the Bill does not address issues around community representation in governance. Specifically a lack of opportunity for our communities to have a meaningful input in decision-making, which would likely lead to investment priorities not reflecting what our community needs.

52. We consider that the Hawkes Bay Model delivers all the beneficial elements of the reforms outlined in the Bill, while enabling better accountability to the community and more effective co-governance with our regional mana whenua.
53. We also consider the definition of Te Mana o te Wai limits the scope of what is covered by the statements and responses, and we are concerned this may lead to a less than ideal outcome around coastal waters. We also have concerns over the transition process and the challenges it presents to councils in continuing to provide safe and reliable 3 Waters services in the establishment period.