



NOTICE OF MEETING

**Notice is hereby given of the
Extraordinary Meeting of the Infrastructure
Committee to be held in the Council Chamber, First
Floor, Civic Administration Building, 101 Esk Street,
Invercargill on Tuesday 14 February 2023 at the
conclusion of the Community Wellbeing Committee
Meeting**

Cr I R Pottinger (Chair)
Mayor, W S Clark
Cr A J Arnold
Cr R I D Bond
Cr P M Boyle
Cr T Campbell
Cr A H Crackett
Cr G M Dermody
Cr P W Kett
Cr D J Ludlow
Cr N D Skelt
Cr L F Soper
Rev E Cook – Māngai – Waihōpai
Mrs P Coote – Kaikaunihera Māori – Awarua

CLARE HADLEY
CHIEF EXECUTIVE

Extraordinary Infrastructure Committee - Public

14 February 2023

Agenda Topic	Page
1. Apologies	
2. Declaration of Interest	
a. Members are reminded of the need to stand aside from decision-making when a conflict arises between their role as an elected representative and any private or other external interest they might have.	
b. Elected members are reminded to update their register of interests as soon as practicable, including amending the register at this meeting if necessary.	
3. Water Services Entities Bill 2 and 3 Submission (A4343082)	3
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WATER SERVICES BILL 2 AND 3 SUBMISSION

To:	Infrastructure Committee
Meeting Date:	Tuesday 14 February 2023
From:	Erin Moogan, Group Manager - Infrastructure
Approved:	Clare Hadley - Chief Executive
Approved Date:	Thursday 9 February 2023
Open Agenda:	Yes
Public Excluded Agenda:	No

Purpose and Summary

Council has the opportunity to submit on the draft Water Services Legislation Bill and the Water Services Economic Efficiency and Consumer Protection Bill. A draft submission based on the key points of concern for Invercargill City is provided for consideration.

Recommendations

That the Infrastructure Committee:

1. Receive the report "Water Services Entities Bill 2 and 3 Submission."
2. Confirm the submission (A4324603), noting any points of change required.
3. Confirm Council **does/ does not** wish to speak to the Select Committee on this matter.

Background

The Government plans to create four new publicly-owned Water Services Entities which will run New Zealand's drinking water, wastewater and stormwater services – currently operated by councils on behalf of communities.

The Government's plan will build these new Water Services Entities (WSEs) on the foundations of existing council infrastructure, people, and expertise.

The first piece of legislation to make these changes – the Water Services Entities Bill has now become law. Two further Bills were introduced into parliament in December and are open for submission, the draft Water Services Legislation Bill (WSL Bill) and the Water Services Economic Efficiency and Consumer Protection Bill (Economic Regulation Bill). Local Government submissions are due by Friday 17 February 2023.

The transition to the new entity is still planned to be completed in Mid-2024.

Issues

The issues raised by the draft Bills which are most relevant to Invercargill City are:

- The lack of impact Local Government feedback to date has had on the broader reform agenda as well as the draft legislation.
- That Invercargill City Council opposes being compelled to collect revenue for a service we will no longer control and deliver.
- We are concerned about the process for determining councils' three waters debts. The outlined process provides no transparent and equitable means by which the Council and Crown may negotiate over this fundamental issue.
- We are concerned that the provisions appear to provide that a WSE will have exemptions from paying rates. WSE infrastructure should not be treated differently to other network infrastructure and WSE's should pay their way.
- We are concerned that so late in the reform process there are still a significant number of matters that are left to be agreed at a later date particularly around the regulatory requirements provided for in the Economic Regulation Bill.

These issues are outlined in the draft submission.

Community Views

Under the Council's Significance and Engagement Policy there is no legal requirement to consult prior to completing this submission. This is because the Council does not have decision making power on this matter. Consultation is not feasible to complete within the timeframe and is not recommended.

Next Steps

The finalised submission will be made to the Government and made available online at <https://icc.govt.nz/three-waters-reform/>

Attachments

1. Draft Submission to the Water Services Legislation Bill and the Water Services Economic Efficiency and Consumer Protection Bill (A4324603)

[] February 2023

Appendix 1
A4324603

The Chair
Finance and Expenditure Committee
Parliament Buildings
Wellington 6160
fe@parliament.govt.nz

Tēnā koe [Madam] Chair,

**INVERCARGILL CITY COUNCIL SUBMISSION: WATER SERVICES LEGISLATION BILL AND
WATER SERVICES ECONOMIC EFFICIENCY AND CONSUMER PROTECTION BILL**

Introduction

1. This submission provides Invercargill City Council's views on the Water Services Legislation Bill (WSL Bill) and the Water Services Economic Efficiency and Consumer Protection Bill (Economic Regulation Bill) introduced to parliament on 8 December 2022. Council's priorities are the interests of local people. To this end Council is working closely with the transition authority to ensure continuation of a quality service for local people and this submission does not impact that position.
2. Many of the concerns raised by our Council with the Minister in September 2021 and in our submission to the Water Services Entity Bill in August 2022 remain relevant and unaddressed. At the time of writing to Minister Mahuta Councillors expressed their strong sense of responsibility for kaitiakitanga for these assets, which the local people have invested into over generations. Our concern remains that services and assets the community view as essential will be viewed differently by the new entity and that the proposed legislation does not allow for effective means for local people to influence decisions about the services which they rely on.
3. We have raised repeatedly, with many examples, our very real concern that Invercargill and Bluff ratepayers will be left significantly worse off as a result of this reform, through needing to subsidise less well served communities, through inappropriate valuation of assets and through a likely failure to achieve the expected efficiencies given the reality of the large diverse area covered in the South Island.
4. The communicated intention of this reform was that the combined cost to ratepayers of their council rates and the new water rates would be the same. We have serious concerns that DIA, coming under pressure from communities struggling with the cost of living, will expect local councils to reduce rates in order to partially offset the increases in water rates. This would result in communities paying more for their water and receiving fewer and lower quality services from their local council across a wide range of other areas.

Council's Key Concerns

5. Councils continue to invest significant time and effort into the reform process. We have fundamental concerns that the feedback provided by councils has had little impact on the draft legislation or the broader reform process particularly given the complexities and importance of the matters involved. We note the timing with which these Bills were introduced and the difficulty the timeline presents for councils. It coincides with the holiday break and councils preparing to submit on the Resource Management Bills and Future for Local Government Review. We understand organisations including LGNZ have repeatedly raised concerns around these timeframes with the Government.
6. We understand LGNZ have raised concerns about the provisions relating to councils collecting water charges on behalf of Water Service Entities (WSEs) until 2029. Invercargill City Council also have this concern and opposes being compelled to collect revenue for a service we will no longer control and deliver.
7. We are concerned about the process for determining councils' three waters debts. The outlined process provides no transparent and equitable means by which the Council and Crown may negotiate over this fundamental issue.
8. We are concerned that the provisions appear to provide that a WSE will have exemptions from paying rates. We agree with the position being put forward by LGNZ that WSE infrastructure should not be treated differently to other network infrastructure and WSE's should pay their way.
9. We are concerned that so late in the reform process there are still a significant number of matters that are left to be agreed at a later date particularly around the regulatory requirements provided for in the Economic Regulation Bill.

WSL Bill

WSE Council interface

10. The WSL Bill tends to treat councils as just another stakeholder group for a WSE to engage with and does not appear to positively enable the ongoing role and functions of councils. As the owner of the asset, which the Government and previous Bills assure council's we are, the ability of council's to inform the use of their assets should be clear. There are specific requirements in this proposed legislation which do not reflect the reality of Local Government operations.

Geographic averaging

11. We have concerns with the provisions throughout the draft Bill that make reference to Geographic charging/averaging. It is unclear what a geographical area will be comprised of, is it a territorial authority level, regional or entity service area? This could have a disproportionate impact on communities like Invercargill where three waters costs are currently low in comparison to other areas due to compliant infrastructure. Clarity on this concept needs to be provided.

Council role in relation to Stormwater

12. We are concerned with the rationale for the ongoing council role in relation to stormwater. Council fails to see how the legislators of the Bills have considered the overall complexity of stormwater and the proposed mixed ownership model. There appears to be a requirement being placed on Councils to pick up the rats and mice elements of stormwater networks. This is not feasible when councils will no longer have the technical ability/capacity to manage these issues. The Bill would benefit from clear statements as to what LGA functions and powers councils are still responsible for exercising. Is there a division of responsibility between council and WSE or an overlap? We have a concern that the new entity is picking and choosing the assets and activities it wishes to be involved in with a view to operating profit. Council's stormwater responsibilities should be restricted to transport stormwater networks and private drainage matters provided for under the building code.
13. It is disappointing that the requirement for Councils to pick up all stormwater functions outside urban areas is inconsistent with the discussions in the NTU's Stormwater Working Group which discussed the primary function of the asset being a key factor. There are Council's with areas of functioning stormwater network in what are currently considered rural residential areas.
14. As written, a number of areas of the Bill remove powers relating to stormwater drainage that will be required if councils still have stormwater functions (outside urban areas); for example clause 22; new Part 6 provisions in relation to works on or under private land.

Return of non-essential assets

15. Under the Public Works Act, land taken from Council and later determined to be surplus should be returned to Council

Role of the Government Policy Statement

16. The content of the GPS has been extended to include Government expectations in relation to:
 - Geographic averaging of residential water supply and residential wastewater service prices across WSE's service area;
 - Redressing historic service inequities.
17. We are concerned that the GPS is not the appropriate place to address these points. GPS tends to be highly political, and direction changes significantly with changes in government. We suggest that timeframes in the legislation for when geographic averaging and historical service inequities should be addressed would be a more appropriate way of addressing this.

Carrying out works

18. Council consider that fifteen working days will not always be enough notice by the WSE to advise that they intend to carry out works on Council land particularly in relations to roads. Provision in the legislation is required for Council to respond to a work request stating more notice is required in certain instances.

19. Further, Council submit whether the onus should remain with the affected landowner to appeal to the District Court rather than for the WSE to obtain District Court approval should the landowner not agree or do nothing? Council views the change in onus could severely impact on the efficiency of the WSE operating.

Controlled drinking water catchments

20. New Part 7 provisions provide a WSE may designate controlled drinking water catchment areas and issue a plan for such areas. There is no requirement in these provisions to give reasons for the designation and plan that supports the need for the controlled drinking water catchment area. Given that any non-WSE owner will need to consent to the plan, it would seem sensible for a requirement to provide reasons to be included in sections 231 and 232.
21. We are also concerned that designation is not the right term to be using in this space. This could cause confusion with the RMA concept of a designation.

Connections to infrastructure

22. The WSEs will need to ensure they provide the ability for the public to find relevant information. It will not be appropriate for Council to have responsibility for finding this information, with associated delays on delivering consents and LIM/PIM services.
23. We are concerned that there are no timing obligations on a WSE for provision of information to TA. This is a potentially very significant issue given statutory and audit timeframes. We are also concerned about liability councils may face for incorrect/incomplete info from WSE?
24. We recommend that the legislation make WSE's responsible for provision of water services information in their own right, instead of "double handling" via councils. Alternatively a legal requirement on the WSEs to provide information to meet statutory local government timeframes should be implemented.
25. It appears the WSE will exert investment power over Council's ability to plan for future land use. There is no clarity within the Bills on how decisions regarding growth and provision of new infrastructure will be managed where there is conflict. For example, under the WSL Bill connections can be declined where infrastructure lacks capacity to deliver increased demand. Councils should be given the ability to challenge a WSE decision that adversely impacts on delivery of land use planning.
26. We note that sections 471&472 require the provision of information by WSE to TAs for LGOIMA and LIMs and PIMs

Customer Service Agreements

27. It is unclear how entering into individual service agreements with existing water users would work in practice. We suggested these may be better dealt with as deemed agreements as it appears logistically impractical for the WSEs to obtain individual agreements.

28. Council would prefer that focus is placed on the WSE writing to all users to advise that the WSE will assume responsibility for delivery of three water services on and from the establishment date and how their ability to be involved in decisions about provision of local water services will change.

Charging Framework

29. We are concerned there is no consultation/engagement requirement for setting charges (except for Infrastructure contribution charges). Currently customers of councils are consulted on proposed rates/charges.
30. Setting of water pricing is not required to be aligned to the funding and pricing plan – this should be more closely aligned
31. Our concerns with the charging provisions in relation to geographic averaging have been provided under general comments above.
32. We are concerned with the implication of this section, that councils will be required to provide the billing services for the entities. There has been a clear message that the WSEs should be required to stand alone from Day 1. They will have the financial and asset scale and should take responsibility immediately. We oppose councils being compelled to collect revenue for a service they will no longer control and deliver, partly because of the public confusion this will generate about who is accountable. Councils will already be faced with public confusion about the role of the new entities and who is responsible for which aspects of the three waters network.
33. Furthermore it is anticipated that the full range of charges for the new entities will be more complex than that provided for by many councils. Many councils may not be in a position to provide more complex billing and should not be compelled to invest time and money in system upgrades to accommodate this. While we do not agree with mandating in this space in general, if it is to proceed any interim arrangements should not extend beyond 1 July 2027 and should be supported by agreed principles and limits to protect councils' interests. The WSE will need to carry the risk of council resources and systems not being able to do what the WSE might want. We understand this is the position being put forward by LGNZ.
34. If there is merit in local authorities acting as the collection agenda, then the legislation should clarify that the invoicing should be on a separate documents and clearly distinguished as coming from the WSE.
35. We are extremely concerned that a WSE may charge Council for stormwater services in the first three years from establishment and leave Council to then on-charge this even though Council no longer has this service in their plans and it is unclear whether it can even be rated for. We oppose councils being compelled to collect revenue for a service they will no longer control and may not be able to effectively fund.
36. We are concerned that the provisions appear to provide that a WSE does not pay rates for pipes or assets it owns that run through or are on property it does not own. This would include infrastructure in roads. We agree with the position being put forward by LGNZ that WSE infrastructure should not be treated differently to other network infrastructure e.g. telecommunications which is rateable when fixed in the road.

37. It is currently unclear whether WSE infrastructure on its own land will be rateable. It should be clarified that land owned by a WSE will be rateable to remove any uncertainty in this space.
38. ICC currently charges rates on infrastructure networks including charging itself for its three waters networks. The inability of Council to charge Uniform Annual General Charge and general rates will have an impact on the revenue of council and our ability to provide services to the community. The WSE are part of the community they operate in and they need to also contribute. It would be a significant departure from established practice for any other situation to eventuate. If it is Government's desire that WSE have lower rates than all other entity types, then Local Government will need some other source of funding.
39. WSE's will require or at minimum benefit from information in the District Valuation Roll. As the draft legislation stands councils will be required to subsidise the operating costs for the WSEs by providing Valuation Roll and Rating Database information free of charge.
40. It is noted that in some cases WSE's will be collecting more revenue using this information than the councils who bear the cost of maintaining and updating it. Unlike regional councils the WSEs are not currently required to contribute to the preparation of the Valuation Roll. S43 of the Rating Valuation Act provides for the division of costs based on proportion of revenue collected using the information. There should be a transparent and equitable division of costs in this area.
41. We are concerned that there are large unknowns as to how Water Infrastructure Contributions charges will work. In practice it appears a high degree of cooperation and information sharing between the WSEs and TAs will be required particularly in those areas with no existing Development Contributions policy, as is the case in Invercargill.
42. 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. Clause 348 should be deleted i.e. that the Crown be liable for infrastructure connection charges.

Engagement

43. We are concerned that Section 461 deals with how engagement should be carried out, not who the engagement should be with. There is no general reference in the Bill to engagement with councils, or any other local authority organisation - although we note there are specific requirements for some decisions or policy documents e.g. water supply assessments and stormwater management plans. Greater specificity is required in this area.

Financial

44. The extension of the Local Government (Financial Reporting and Prudence) Regulations 2014 to WSEs should incorporate WSE subsidiaries and account for legal claims and liabilities.
45. WSEs are publicly accountable. While operationally it is sensible that the WSE Chief Executive can waive payment of debt, this power opens them to special pleading. WSEs should be required to prepare a formal policy on the waiver of debt and publish this in a similar manner to the funding and pricing plan.
46. Schedule 3 of the Bill seems to give direction around the form of annual report Councils produce for FY23/24 and the guidance that councils shouldn't be including 3Waters' financials in their FY23/24 year-end financial statements. If that's the case, and given that the WSEs come into existence as at 1 July 2024, then at a point in time (midnight on 30 June 2024) those 3Waters assets and liabilities won't belong to anybody. This obviously also has implications for councils' FY24 annual plans which are being finalised now. For financial reporting, it is essential the effective date of transfer should have a specific time and we request the wording relating to this is clarified.
47. Invercargill City Council has water supply obligations and potential liabilities under the Invercargill City Aluminium Smelter Water Supply Act 1971. The list under Clause 43(e) should be expanded to include legislative obligations to provide certainty in this space.

Transfer Provisions

48. The draft legislation grants the Minister broad discretion to amend the allocation schedule at the final approval stage without any local authority response. This is in opposition to good faith assurances throughout the reform that this would be a collaborative process. Such a controversial and significant transfer of assets requires agreement by both parties and is critical to the overall success of the reform process and relationship going forward. Council submit that no further discretion is given to the Minister to make changes to the allocation schedule on a unilateral basis.
49. We are concerned about the process for determining councils' three waters debts. The outlined process provides no transparent and equitable means by which the Council and Crown may negotiate over this fundamental issue. The stated aim of the Government's No Worse Off and Better Off funding was to ensure that the community was compensated for the loss of their assets and that their ability to support community infrastructure was not impacted. The process for determining debt levels does not align with the spirit of these funding decisions. In no equitable process should the purchaser be able to determine the value of the assets he is compulsorily acquiring with no right of review. We believe that it is inappropriate for the Minister to approve each allocation schedule (assets, debt, revenue). There is also no obligation on the Minister to engage with the WSE or local authority. It is essential that local authorities are also included as being determiners of this debt under this clause.

Economic Regulation Bill

50. Council questions the significant level of regulatory compliance introduced by the legislation and questions whether the value will offset the cost of what seems to be a highly intensive compliance regime for what are still public entities.
51. A significant portion of this Bill provides for matters that are left to be agreed at a later date. Council agrees with the LGNZ commentary that asking stakeholders to embrace a high trust/high hope model will only heighten existing scepticism around the proposed reform.
52. Council supports the intent of the information disclosure elements of the Economic Regulation Bill and agrees with the LGNZ position that they will deliver on most of the regulatory policy outcomes the Government has targeted for improvement. In particular, information disclosure is likely to deliver accountability, transparency and efficiency, and support development of asset management systems and processes.
53. Water services are subject to regulation from Taumata Arowai, Regional Councils and other national and regional environmental standards as well as the Commerce Commission. There must be clarity about how the regulatory bodies and standards all fit with each other.

CONCLUSION

54. The Council thanks the Committee for the opportunity to provide a submission on the Water Services Legislation Bill and the Water Services Economic Efficiency and Consumer Protection Bill.
55. The Council requests the opportunity to make an oral submission to the Committee.

Kā mihi,

Nobby Clark
Mayor of Invercargill