



NOTICE OF MEETING

**Notice is hereby given of the Extraordinary Meeting
of the Invercargill City Council
to be held in the Victoria Room, Civic Theatre,
88 Tay Street, Invercargill on
Tuesday 11 June 2024 at the Conclusion of the
Community Wellbeing Committee**

Mayor W S Clark
Cr A J Arnold
Cr R I D Bond
Cr P M Boyle
Cr S J Broad
Cr T Campbell
Cr A H Crackett
Cr G M Dermody
Cr P W Kett
Cr D J Ludlow
Cr I R Pottinger
Cr L F Soper
Cr B R Stewart

MICHAEL DAY
CHIEF EXECUTIVE

Extraordinary Council - Public Agenda

11 June 2024 05:00 PM

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SUBMISSION ON CHANGES TO GOVERNMENT POLICY - EMERGENCY WORKS INVESTMENT POLICIES

To: Council

Meeting Date: Tuesday 11 June 2024

From: Doug Rodgers – Manager Strategic Asset Planning

Approved: Erin Moogan - Group Manager - Infrastructure Services

Approved Date: Monday 10 June 2024

Open Agenda: Yes

Public Excluded Agenda: No

Purpose and Summary

The purpose of this report is to approve a submission to the Government on changes in policy for emergency 'top-up' funding in response to any significant events impacting infrastructure.

Recommendations

That Council:

1. Receives the report "Submission on Changes to Government Policy – Emergency Works Investment Policies".
2. Approve the attached submission (Appendix 1).

Background

The Government has announced a review of Emergency Works Investment Policies used in response to the growing intensity of weather events which effect infrastructure. The level of National Land Transport Fund funding currently available is below what is projected to be needed with the occurrence and intensity increasing with these weather events.

The National Land Transport Fund allocation to respond to these events is not sufficient to fund all response and recovery work for those events that qualify for funding.

Government's response has been to seek to amend the thresholds for funding emergency infrastructure works due to weather and natural events and require Council to bridge more of the gap.

Issues and Options

Analysis

Proposed Policy

The proposed policy will reduce Emergency Funding Assistance Rate (FAR) 'top up' funding.

It will also make changes to significant event return periods (10 year to 20 years). Essentially the event needs to be worse moving forward than would be considered a threshold triggering event currently.

The risk in this is that should an event be considered a 1 in 10-year event, Council would not receive an enhanced FAR level of funding to respond to the event, should these criteria remain.

Given this, the change in enhanced funding thresholds, creates a risk for Council for more severe events with shorter return periods.

The impact of these proposed changes are only within Work Categories 140 – Minor Events and 141 – Emergency Works .

It is noted that Emergency works funding has significantly exceed the allocated fund in 8 of the last 10 years, with significant additional Crown funding being required for 'nationally significant' events.

Policy settings have not yet been adapted to the need to recognise managed retreat, level of service responses, resilience improvements and consideration of social and cultural impacts. This is an acknowledged gap in process.

Key Aims For The Review

Financial sustainability.
Appropriate incentives – preventative measures.
Value for money.
Improved alignment with national plans.

Summary Of Proposed Changes

Change the qualifying trigger for an emergency event attracting an enhanced FAR to a minimum frequency 1 in 20-year event from the current 1 in 10-year event.

Reduce the enhanced FAR from normal FAR +20% to normal FAR +10%.

Retain the current trigger for enhanced FAR as costs exceeding 10% of annual maintenance spend.

Restrict provision of a bespoke FAR (i.e. greater than an enhanced FAR) to only those extreme events for which Crown funding is made available.

Risk

Risks are centred on the availability of funding and the application of any mechanism to gain access to that funding.

Should a 1 in 10-year event occur Council would be responsible for any funding required above the FAR threshold. For a significant event this may be a high cost. There is an uncertainty of funding.

Options

1. Approve the draft submission as final for the Government proposed policy change.
2. Decline to provide a submission on the proposed policy change.

Community Views

The Government is leading consultation nationally on this matter.

Implications and Risks

Strategic Consistency

This report is Consistent with strategic frameworks.

Financial Implications

Should the policy be adopted, financial risk remains around funding of significant events impacting infrastructure.

Legal Implications

There are no legal implications.

Climate Change

There are no direct negative climate change implications, other than to note that as climate change progresses there is an expectation that significant events may occur more regularly.

Risk

Risks are addressed in the report.

Next Steps

The draft submission will be finalised and delivered to Government.

Attachments

1. Submission on changes to Government Policy - Emergency Works Investment Policies (A5397722).

Submission on changes to government policy - Emergency works investment policies

Feedback to proposal

Invercargill City Council welcomes the opportunity to provide feedback on “Emergency works investment policies” consultation dated 2 May 2024.

Invercargill is a vibrant City the commercial centre for the Southland region. It has an estimated population in 2023 of 57,100. The region is not expected to have significant population growth but has the capacity in its infrastructure currently to satisfy a population of at least 60,000 or more. Its land area is around 49,000 hectares and includes the city, surrounding rural land and the port township of Bluff.

Our infrastructure

Invercargill City Council manages 295km of urban sealed roads, 302km of rural roads (123km of those unsealed), 55 bridges, 500 km of footpaths (including off road cycle lanes) along with streetlights and off-street facilities. The city also has 419km of stormwater pipe, 368km of wastewater pipe and a water supply and distribution network that has critical exposure to significant events, including structural risk from plant, having a single source (Oreti River) of water and exposure through backflow prevention challenges.

Council has concerns around the ability to fund remedial works that result from a significant weather or other event, should Government decide that enhancement funding criteria over FAR is made more difficult to access.

As the climate changes and the predictions of severe events occurring more regularly come to fruition, local authorities need to be assured that assistance that is appropriate and funded to the level required is in place.

Whilst it is acknowledged that the fiscal circumstances prevailing mean that additional or expanded funding is not feasible, we would argue that the impact of moving the threshold for additional emergency funding (additional to FAR) to a 20-year return period, opens up the distinct possibility of a more severe event thereby increasing the risk to infrastructure, life and imposing longer-term costs. Council would be interested in how Government intends this risk will to be managed centrally.

Critical Assets

These are defined as “those which have a high consequence of failure, but not necessarily a high probability of failure”. This aligns with the probability of a significant event impacting essential and critical infrastructure.

Critical infrastructure in Invercargill includes water supply networks, sewerage and wastewater networks, roading, bridges and associated flood protection installations.

Risk

Invercargill City is at risk from weather events that lead to flooding and to tsunami risk from seismic events, due to the prevailing topography. Whilst this risk is low, we would urge the Government to consider these prevailing risks and the associated costs that would be borne by our residents from a policy change that moves the funding threshold and risk to local authorities.

Increasing the additional 'top up' funding threshold to a longer return period, inevitably increases the likelihood of a more severe event and an increased level of damage to our infrastructure.

Current resilience

The draft policy also lists a number of expectations for the new policy direction. It is not clear how these goals are achievable without addressing the resilience of our infrastructure to more severe events. Whilst the draft policy indicates this is an ambition of the new policy, it is not clear how this is to be achieved or funded.

Council, through its asset management planning processes has programmed renewals ensuring the life of the asset, this will also address resilience to a level that is reasonable and in line with funding envelopes that Government provides. A change to emergency funding access provisions, may impact those plans in terms of the level of additional resilience needing to be built into asset management.

Invercargill City Council would like to see assurance that sufficient Government funding for significant emergency events remains available to facilitate repair and remediation of infrastructural assets, should a significant event occur.

It is Council's view that funding to increase the resilience of infrastructure is a first step in ensuring a robust infrastructure network. The level of funding required for responding to emergency is a function of the robustness of the infrastructure. Should infrastructure be exposed in this way, a lower return period event can impact disproportionately and require as much repair as a longer period event.

Invercargill City Council is happy to discuss these matters directly.

LOCAL GOVERNMENT (WATER SERVICES PRELIMINARY ARRANGEMENTS) BILL SUBMISSION

To: Council

Meeting Date: Tuesday 11 June 2024

From: Andrew Strahan - Transition Manager - 3 Waters Reform

Approved: Erin Moogan - Group Manager - Infrastructure

Approved Date: Tuesday 11 June 2024

Open Agenda: Yes

Public Excluded Agenda: No

Purpose and Summary

The report provides an assessment of the Local Government (Water Services Preliminary Arrangements) Bill which was introduced by the Government on 30 May 2024. The Bill was referred to the Select Committee on the same day and submissions are accepted up to 13 June 2024.

A draft submission on the Water Services Amendment Bill is provided. Councillor feedback is sought on the content of the submission and approval to lodge the document by the noted deadline.

Recommendations

That Council:

1. Receives the report "Local Government (Water Services Preliminary Arrangements) Bill Submission".
2. Provides feedback on ICC's draft submission to the Local Government (Water Services Preliminary Arrangements) Bill
3. Provides staff with approval to lodge the submission.

Background

With the election of a new Government, on 14 December 2023 the Minister of Local Government (the Minister) announced a new direction for water services delivery and the intention to repeal the previous government's water services legislation.

On 13 February 2024, the Minister introduced the Water Services Acts Repeal Bill (the First Bill). The First Bill was enacted on 16 February 2024 and repealed the establishment of the water service entities and requires Councils to provide for water services in their 2024-34 Long-term Plans.

The Minister advised that further legislation will be introduced to implement the Government's Local Water Done Well Policy. This will be progressed in a two-stage approach.

The Local Government (Water Services Preliminary Arrangements) Bill (Second Bill) lays the foundations for councils to move to the next stage of water reform. The Second Bill was introduced on 30 May 2024 and, subject to parliamentary timetables, and is expected to be passed by August 2024.¹

In the next year, all councils will need to produce plans showing how they will deliver financially sustainable water services. For all territorial authorities, the Second Bill provides for the following for water services:

- requirements to develop water services delivery plans.
- foundation "economic regulation" through information disclosure requirements; and
- the ability to choose a new category of water services council-controlled organisations to deliver services (among other options).
- The Second Bill also includes an Auckland-specific solution which relates to Watercare Services Limited.

A Third Bill providing for the long-term replacement regime will be introduced in December 2024 and is expected to be passed by mid 2025. The Bill will create a more detailed water services regulatory set up, including:

- long-term requirements for financial stability.
- further details about the powers, functions, and duties of a water services entity.
- further details about any other water services delivery model.
- accountability, planning and reporting regimes for water services.
- comprehensive economic regulation.
- amendments to the regulatory settings for Taumata Arowai, the Water Services Regulator; establishing a regulatory backstop power; and
- further changes to the LGA 2002 and other legislation to strengthen the delivery of water services.

Feedback on the contents of the submission is sought and approval to submit the submission by the 13 June 2024 deadline.

Analysis

An assessment of the Local Government (Water Services Preliminary Arrangements) Bill is provided as Attachment 1. Based on the assessment, a submission has been drafted for councillor review. That document is provided as Attachment 2.

Drafts of Taituarā-Local Government Professionals Aotearoa's and Local Government NZ's submissions to the Bill were also used to inform ICC's analysis and submission.

Next Steps

Incorporate feedback and finalise the submission to the Local Government (Water Services Preliminary Arrangements) Bill.

Submit the submission and request to present in person.

Provide updates to the ICC Infrastructure Committee, at least bi-monthly or more frequently as required.

Provide an update to all ICC 3 Waters staff on the recent Local Government (Water Services Preliminary Arrangements) Bill.

Attachments

1. Bill Analysis Consolidation – A5410854
2. Invercargill City Council Submission - Local Government (Water Services Preliminary Arrangements) Bill – A5401855

Ref	Topic	Issue	Analysis	ICC Submission Point	Submission Ref
1	Definitions	Stormwater network is narrowly defined. ☑ Clause 5	The definition of stormwater network does not capture green infrastructure, overland flow paths and streams included in the definition of stormwater network under the Water Services Act 2021. This could result in confusion as to whether those critical assets are subject to the requirements of the Bill, that is inclusion in WSDPs.	<i>Recommend that definition of stormwater in the Bill should be clarified. One option would be to reflect the definition of stormwater network from the Water Services Act 2021 and include:</i> <ul style="list-style-type: none"> • <i>an overland flow path;</i> • <i>green water services infrastructure that delivers stormwater services;</i> • <i>watercourses that are part of, or related to, the infrastructure used for stormwater services,</i> 	4,5
2	Water Services Delivery Plan ("WSDP")	<i>Period of time covered by WSDP</i> WSDPs must cover a period of "not less than" 10 consecutive financial years, starting with the 2024–2025 financial year. ☑ Clause 13	The 10-year time frame is the minimum period of time and there is nothing preventing the Council from drafting a WSDP that focuses on a longer time frame. The main issue is not whether a council chooses to extend the timeframe considered in a WSDP, rather whether the Bill should require all councils to consider a longer timeframe. For example, councils are expected to prepare 30-year infrastructure strategies for their water services (and other network infrastructure) as part of the long term plan process. That said, councils have a short timeframe to draft WSDPs, therefore the period of time covered should be balanced against the short timeframe for completion.	That there is no integration between the new WSDP's and existing planning documents under the Local Government Act for example 30 Year Infrastructure Strategy or Long Term Plan. Amendment sought to clause 13(1) of the Bill to require that water services delivery plan must cover a period of not less than 30 consecutive financial years, starting with the 2024–2025 financial year. With the information required to be submitted for years 11 to 30 to be of a strategic planning nature.	6,7
3	Timeframe to draft WSDP	Councils must prepare WSDPs and submit the WSDPs to the Secretary for Local Government (" Secretary "), (that is the Secretary for Internal Affairs or another delegate at DIA) no later than 1 year after the date in which the Bill comes into force. ☑ Clause 16 The Secretary may make rules	This is a short timeframe to draft and submit WSDPs considering the wide scope of the required contents. The Regulatory Impact Statement for the Bill notes that the 12 month timeframe may effect what can be "feasibly covered in the WSDPs" but that it should "support each council to focus on what it needs to do to transition to a deliver	<i>Recommend amending clause 16(1)(a) of the Bill to allow territorial authorities to submit their WSDPs no later than 2 years after the date on which the Act comes into force.</i> <i>Recommend amending clause 14 to specify a deadline by which the Secretary may make rules in relation to WSDPs (for example, two months after the date on which the Act comes into force).</i>	8,9 10,11

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		<p>specifying additional information, and the manner and form in which information can must be included in WSDPS.</p> <p>☑ Clause 14</p>	<p>of its water service onto a financially sustainable footing ahead of economic regulation".36</p> <p>The Minister may grant a deadline extension to a council or a joint arrangement for submitting a WSDP.37 An extension applicant must apply no later than one month before the one year WSDP submission deadline, or the Minister may grant an extension in exceptional circumstances. The Bill does not prescribe a minimum or maximum timeframe for an extension.</p> <p>The grounds on which the Minister may decide to grant an extension application mainly target delays caused by the process of joining / forming a joint arrangement, although there is a catch all "any other reason".</p> <p>That said, the success of any application may be limited given the Government's desire for councils to move quickly to consider financial sustainability.</p> <p>The Secretary's power to make rules that are material to the preparation of a WSDP should be limited in time to allow Council to meet their own statutory deadlines.</p>		
4	No definition for financial stability/sustainability	<p>The Bill lacks clarity on the practical meaning of financial stability/sustainability. The explanatory note indicates that further legislation will outline long-term financial sustainability requirements. This is problematic, as councils must consult on their WSDPs while this detailed legislation is still being developed.</p>	<p>Financial sustainability is defined as having sufficient revenue for long-term water service investment and regulatory compliance, a standard many councils currently do not meet. There is no explicit requirement to assess the affordability for consumers and ratepayers.</p> <p>WSDPs must demonstrate public commitment to financial sustainability, but this requirement is vague and needs clarification.</p> <p>As the plan requires detailed information for the first three years, this demonstration is</p>	<p><i>Recommend that the Bill provides a clear objective definition for financial stability/sustainability</i></p>	

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			<p>needed within that period. Additionally, councils must explain how they will ensure financial sustainability by 30 June 2028.</p> <p>These elements create an arbitrary de facto deadline, posing challenges for some councils and potentially undermining long-term sustainability by focusing on short-term goals. Clarification is needed, as long-term requirements will only become clear with further legislation.</p>		
5	DIA processing time frames of WSDP.	<p>The Secretary must consider and then accept (or not accept) a WSDP only if the WSDP complies with the Bill.</p> <p>The Secretary may consult with government departments, the Commerce Commission, Taumata Arowai and/or Crown Infrastructure Partners as part of their decision making.</p> <p>The Secretary may decide not to accept a plan, and may require a council or a joint arrangement to resubmit a plan with amendments within a specified timeframe.</p> <p>☑ Clause 18</p>	<p>The Bill does not direct the Secretary as to the timeframe in which they must decide to accept (or not) on a WSDP.</p> <p>Given that councils may need to do further work on a WSDP, or progress operational decisions to implement the WSDP, it could prove important that the Secretary considers a WSDP in a known timeframe or, at a minimum, in a timely manner.</p> <p>The Regulatory Impact Statement states that "[r]eview and acceptance by the Department is likely to be completed in August 2025", which reveals the policy intention that DIA will review WSDPs in a timely manner.³⁸ That likely timeframe also fits with the indicative legislative timeline that was shared earlier by DIA which suggests the Bill may be enacted any time between July–September 2024, meaning the Secretary would consider most WSDPs about a year later.</p>	<p><i>Recommend that clause 18 should be amended to provide a deadline by which the Secretary must advise the territorial authority, or joint arrangement, of a decision to accept a WSDP or direct amendments to a WSDP. For example, within two months of receipt of the WSDP.</i></p>	14,15
6	Joint arrangements	<p>The Bill allows a territorial authority to enter into a joint arrangement with one or more other territorial authorities for the purposes of submitting a joint WSDP in relation</p>	<p>A joint arrangement allows councils to enter arrangements together to deliver water services.</p> <p>While the Bill does not specify a particular purpose for a joint WSDP, the same</p>	<p><i>Recommend that the Bill should be amended to expressly permit and clarify how a territorial authority must proceed if it wants to change the arrangements for delivering water services after the delivery and acceptance of a WSDP.</i></p>	16, 17

Ref	Topic	Issue	Analysis	ICC Submission Point	Submission Ref
		<p>to delivering the water services in the joint service area covered by the arrangement.</p> <p>☑ Clauses 9, 10, and 12</p>	<p>requirement as to the contents WSDPs generally would apply, including identifying the current state of water services, meeting regulatory quality standards for all three categories of water, achieving financial sustainability, and supporting housing growth and urban development as specified in LTPs.</p> <p>A joint arrangement must cover drinking water and waste water, and may also cover stormwater (whether that is for all councils in the joint agreement or just some).</p> <p>There are additional requirements for a joint WSDP, including that it must contain information on the likely form of the joint arrangement, namely whether it will be delivered by:</p> <ul style="list-style-type: none"> • a joint WSCCO; • a joint local government arrangement or joint arrangement under s 137 of the LGA 2002; or • another organisation or arrangement that the territorial authorities are considering. <p>Otherwise, the Bill does not place many restrictions on joint arrangements for the purposes of the WSDPs. For example, the Bill does not restrict councils party to a joint arrangement to contiguous boundaries (subject of course to the Secretary accepting a joint WSDP for a joint arrangement for councils whose boundaries did not connect).</p> <p>The Regulatory Impact Statement states that there are likely three scenarios for WSDPs:39</p> <ul style="list-style-type: none"> • councils propose to continue to deliver water services individually and the WSDPs focus solely on a council's own district; 		

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			<ul style="list-style-type: none"> • councils want to explore joint service arrangement but can only signal an intention to do this within the timeframes, as an arrangement cannot be completed by the WSDPs' deadlines; and • councils are able to submit a WSDP proposing a joint arrangement, collectively. <p>However, it is unclear in the Bill what the status of a WSDP is once it has been accepted and published by the Secretary. For example, whether a WSDP would take primacy over the LTP, or other strategy and planning documents of the Council.</p> <p>It is also unclear how a council could join a joint arrangement after a WSDP has been submitted to the DIA, or accepted.</p> <p>The Bill does create an implicit obligation to implement the WSDP. Clause 28 of the Bill retains the Ministers powers under Part 10 LGA 2002 (which empowers a Minister to intervene if problems arise). The Bill makes explicit that the definition of "problem" in the LGA 2002 includes a failure by a council, or group of councils to, among other things, give effect to proposals or undertakings specified in an accepted WSDP relating to the future of delivery of water services.</p>		

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7	Economic regulation – information disclosure	<p>The Bill provides for further information disclosure to the Commerce Commission and the public via an Order in Council specifying an entity or entities to which a determination may apply.</p> <p>☑ Clause 33 The information required to be disclosed would be specified via a determination by the Commission.</p> <p>☑ Clause 35 This could include a wide range of information such as financial statements, asset values, prices, contracts, and performance measures.</p> <p>☑ Clause 37</p>	<p>WSDPs are intended to be part of a wider economic regulation regime based on information disclosure where such disclosure promotes the long-term benefit of consumers and supports efficiency, innovation and investment.</p> <p>The specification of an entity under clause 33, which then leads to a determination by the Commerce Commission under clause 35, is an escalation in the level of regulation to which a territorial authority is subject in the scheme of the information disclosure regime.</p> <p>Clause 33 does not, however, provide any guideline or process as to the circumstances in which the Minister may recommend an entity be subject to this further step of economic regulation. In other economic regulation regimes a process to establish that the benefits of additional regulation would exceed the related costs would usually feature.</p>	<p><i>Recommend that clause 33 should be amended to clarify the circumstances in which the Minister can recommend that an entity be subject to a determination under clause 35.</i></p>	18, 19
8	Economic regulation - penalties	<p>The Bill imposes sizeable penalties on persons who fail to comply with information disclosure obligations. The maximum amount of pecuniary penalty is \$500,000 for individuals or \$5m in any other case. The Bill would also create an offence to intentionally contravene information disclosure obligations.</p> <p>☑ Clauses 41–46</p>	<p>Significant penalties, in the context of water services delivery, may be counterproductive. That is, heavy penalties on publicly owned water services providers directly hurt the consumers of water services through potentially increased prices or reduced investment.</p>	<p><i>Recommend that the significance of the pecuniary penalty regime might need to be reconsidered in the specific context of the non-profit objective of publicly owned water services entities.</i></p>	20,21

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9	<p>Establishment of Council-Controlled Organisations ("CCOs")</p>	<p>The Bill provides a special process for establishing a WSCCO. The process represents a streamlined consultative process compared to the LGA 2002.</p> <p>The Bill describes a new category of CCO, a WSCCO, but does not describe any additional or distinct powers, duties, or functions for a WSCCO.</p> <p>☑ Part 3 (clauses 49–59).</p>	<p>While the Bill is agnostic as to the structure councils choose to deliver water services, it does create a process that makes it easier for councils to establish, join, or amend a WSCCO. The express reference to "join" and "amend" reinforce that, in part, the Bill wants to facilitate joint arrangements between councils.</p> <p>The Bill creates a more streamlined consultation process compared to the LGA 2002, only requiring a council to present the status quo and the WSCCO option to the public during consultation (clause 51).</p> <p>Before a territorial authority decides whether or not to establish or join the WSCCO, the territorial authority is only required to undertake consultation once, despite LGA 2002 provisions which may normally require further consultation (for example, related to a Council's significance and engagement policy) (clause 52).</p> <p>During the consultation on a decision to establish, join, or amend a WSCCO, a council must make the information listed at clause 54(1) "publicly available". The Bill does not define "publicly available".</p> <p>The alternative requirements contemplate that a council or councils may wish to establish, join, or amend a WSCCO before or after submitting a WSDP. Except for one clause on exemptions from a cost-effectiveness review under the LGA 2002 (section 17A) which is automatically repealed after five years, the Bill does not impose any time limits on the availability of the streamlined WSCCO process.</p> <p>The Bill seeks to streamline the process for forming a WSCCO. However, given the stated desire to support local choice, it is not clear why</p>	<p><i>Recommend that a definition of "publicly available" is provided for in the Bill and suggest that the definition in s 5(3) of the LGA 2002 is added to the interpretation section of the Bill.</i></p> <p><i>Recommend the proposed modifications of LGA requirements should apply in any process where a council is creating a vehicle to enable a joint arrangement, not just a WSCCO.</i></p>	22, 23

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			<p>the Bill takes this approach for WSCCOs but not other vehicles to deliver joint arrangements, such as a joint local government arrangements, which may be determined by councils to better meet local preferences and requirements.</p> <p>The proposed modifications of LGA requirements should apply in any process where a council is creating a vehicle to enable a joint arrangement.</p> <p>The explanatory note for this Bill states that further legislation will provide a new class of Council-Controlled Water Organisations. Making decisions on which vehicle is best for a joint arrangement is complicated by the lack of this detail now.</p>		
10	Te Mana o te Wai	<p>Taumata Arowai is required to disregard the hierarchy of priorities under Te Mana o Te Wai when making wastewater environmental performance standards.</p> <p>☑ Clause 99</p>	<p>The Bill requires Taumata Arowai to disregard the hierarchy of priorities under Te Mana o Te Wai (as set out in clause 1.3(5) of the National Policy Statement for Freshwater Management) when making wastewater environmental performance standards.</p> <p>Given the consultation and analysis which went into the adoption of Te Mana o Te Wai and the NPS, it may be inappropriate for this Bill to effectively repeal their priorities with respect to wastewater environmental performance standards.</p>	<p><i>Query whether it was intended that Te Mana o Te Wai hierarchy of priorities (as set out in clause 1.3(5) of the National Policy Statement for Freshwater Management) was intended to be disregarded by Taumata Arowai when making wastewater environment performance standards. If this was intended, then request that the change be reconsidered.</i></p>	24, 25
11	Treaty settlement obligations, or any other existing rights and interests.	<p>The Bill offers no clear guidance as to the impact of the proposed legislation on Treaty of Waitangi settlements and obligations or any other existing rights and interests.</p>	<p>The Bill offers no clear guidance as to the impact of the proposed legislation on Treaty of Waitangi settlements and obligations.</p> <p>Unlike previous proposed water policy reform, the Bill does not make provision that Treaty settlement obligations will prevail, or that any rights or interests in water are preserved.</p>	<p><i>Recommend the Bill provide clarity as to the effect of the Bill on Treaty settlement obligations, or any other existing rights and interests.</i></p>	26, 27

Ref	Topic	Issue	Analysis	ICC Submission Point	Submission Ref
			<p>However, if ICC was to, at a future date, decide to enter into a joint arrangement with another (or several) territorial authorities, or to transfer assets to a WSCCO, it might be desirable to have statutory clarity that Treaty settlement obligations and existing rights or interests in water should prevail, and any transfer of ownership would continue to recognize those interests.</p>		
12	Bill 3	<p>The third Local Water Done Well bill, or Bill 3, will provide much more in the way of policy and legislative detail. Bill 3 will be introduced in late 2024, intended for enactment in 2025.</p>	<p>Bill 3 will likely include:</p> <ul style="list-style-type: none"> • long-term requirements for financial sustainability; • establishing the powers, duties, and functions of WSCCOs; • accountability, planning, and reporting regimes for water services; • providing for comprehensive economic regulation (developed in conjunction with the Minister of Commerce and Consumer Affairs with support from MBIE); • amendments to the regulatory settings for Taumata Arowai–the Water Services Regulator; • refinements to water services delivery system settings. <p>As with this Bill, Bill 3 could be a standalone statute that also amends the LGA 2002.</p>	<p><i>There have been a number of matters not addressed in Bill 2 and are advocated for inclusion , or in Bill 3.</i></p> <p><i>These matters are:</i></p> <ul style="list-style-type: none"> • <i>Rights relating to the sharing of information between territorial authorities and WSCCOs, for example, accessing consent related information in joint arrangements.</i> • <i>Relationship (if any) between small and private water supplies and networked WSCCOs.</i> • <i>Bylaw powers of WSCCOs, including for example in relation to trade waste.</i> • <i>Rights and interactions of WSCCOs with other infrastructure networks.</i> • <i>Enforcement capabilities for WSCCOs for breach of network rules.</i> • <i>Engineering standards for water services.</i> • <i>Climate change preparedness.</i> 	29, 28

Ref	Topic	Issue	Analysis	ICC Submission Point	Submission Ref
13	Upfront support to avoid downstream intervention	Lack of support to build Council partnerships	<p>We acknowledge the need to provide for the appointment of a Crown Facilitator for WSDPs or a Crown Water Specialist which would support councils to reaching agreement in joint arrangements to develop and submit WSDPs respectively.</p> <p>However, Crown intervention should be a last resort. To reduce its need, and to support better outcomes, Councils should be given timely support as soon as possible such as the provision of guidance, templates, and information, and support for building partnership.</p> <p>In addition, there is a need for a national role to deliver consistency across the water sector. There are significant efficiencies to be gained. Information assets from the Affordable Water Program offer a good starting point to develop from.</p>	<p><i>Crown intervention should be a last resort. To reduce its need, and to support better outcomes, Councils should be given timely support as soon as possible such as the provision of guidance, templates, and information, and support for building partnership.</i></p>	30, 31



12 June 2024

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

Dear Sir/Madam

Invercargill City Council Submission - Local Government (Water Services Preliminary Arrangements) Bill

1. The Invercargill City Council (the "Council") thanks the Finance and Expenditure Select Committee for the opportunity to provide a submission to the Local Government (Water Services Preliminary Arrangements) Bill (the Bill).
2. The Council is disappointed to have been provided such a short time frame to respond to the Bill particularly given the importance of the matters involved. Given the timeframe, it is nearly impossible to consider what is being proposed let alone collaborate with Councils in the region. This does not provide a good basis for considered and complete feedback.
3. In addition, key details on the Government's new approach will not be known until further legislation is introduced later in the year. As such, there are several areas highlighted that have not been addressed in the current Bill. Our submission identifies these areas and recommends that they are either addressed via the current Bill or through subsequent legislation.

Council's Submissions On The Bill

Definitions

4. Clause 5 - Stormwater network is narrowly defined. The definition of stormwater network does not capture green infrastructure, overland flow paths and streams included in the definition of stormwater network under the Water Services Act 2021.

5. Recommend that definition of stormwater in the Bill should be clarified. One option would be to reflect the definition of stormwater network from the Water Services Act 2021 and include:
 - an overland flow path.
 - green water services infrastructure that delivers stormwater services.
 - watercourses that are part of, or related to the infrastructure used for stormwater services.

Water Services Delivery Plan ("WSDP")

6. Clause 13 - WSDPs must cover a period of "not less than" 10 consecutive financial years, starting with the 2024–2025 financial year.
7. That there is no integration between the new WSDP's and existing planning documents under the Local Government Act for example 30 Year Infrastructure Strategy or Long-term Plan. Amendment sought to clause 13(1) of the Bill to require that water services delivery plan must cover a period of not less than 30 consecutive financial years, starting with the 2024–2025 financial year. With the information required to be submitted for years 11 to 30 to be of a strategic planning nature.

Timeframe to draft WSDP

8. Clause 16 - Councils must prepare WSDPs and submit the WSDPs to the Secretary for Local Government no later than 1 year after the date in which the Bill comes into force. This is a short timeframe to draft and submit WSDPs considering the wide scope of the required contents, regional collaboration and consultation required and dependency on enabling legislation which will not be introduced until late 2024.
9. Recommend amending clause 16(1)(a) of the Bill to allow territorial authorities to submit their WSDPs no later than two years after the date on which the Act comes into force.

WSDP Additional Information requirements

10. Clause 14 The Secretary may make rules specifying additional information, and the manner and form in which information can must be included in WSDPS. The Secretary's power to make rules that are material to the preparation of a WSDP should be limited in time to allow Council to meet their own statutory deadlines.
11. Recommend amending clause 14 to specify a deadline by which the Secretary may make rules in relation to WSDPs (for example, two months after the date on which the Act comes into force).

No definition for financial stability/sustainability

12. The Bill lacks clarity on the practical meaning of financial stability/sustainability. The explanatory note indicates that further legislation will outline long-term financial sustainability requirements. This is problematic, as councils must consult on their WSDPs while this detailed legislation is still being developed.
13. Recommend that the Bill provides a clear objective definition for financial stability/sustainability

No defined DIA WSDP processing time frame

14. Clause 18 - The Bill does not direct the Secretary as to the timeframe in which they must decide to accept (or not) on a WSDP. Given that councils may need to do further work on a WSDP, or progress operational decisions to implement the WSDP, it could prove important that the Secretary considers a WSDP in a known timeframe or, at a minimum, in a timely manner.
15. Recommend that clause 18 should be amended to provide a deadline by which the Secretary must advise the territorial authority, or joint arrangement, of a decision to accept a WSDP or direct amendments to a WSDP. For example, within two months of receipt of the WSDP.

Status of the published WSDP

16. Clauses 9, 10, and 12 – It is unclear in the Bill what the status of a WSDP is once it has been accepted and published by the Secretary. For example, whether a WSDP would take primacy over the LTP, or other strategy and planning documents of the Council. It is also unclear how a council could join a joint arrangement after a WSDP has been submitted to the DIA, or accepted by the DIA.
17. Recommend that the Bill should be amended to expressly permit and clarify how a territorial authority must proceed if it wants to change the arrangements for delivering water services after the delivery and acceptance of a WSDP.

Economic regulation – information disclosure

18. Clause 33 - The Bill provides for further information disclosure to the Commerce Commission and the public via an Order in Council specifying an entity or entities to which a determination may apply. Clause 33 does not, however, provide any guideline or process as to the circumstances in which the Minister may recommend an entity be subject to this further step of economic regulation. In other economic regulation regimes, a process to establish that the benefits of additional regulation would exceed the related costs would usually feature.
19. Recommend that clause 33 should be amended to clarify the circumstances in which the Minister can recommend that an entity be subject to a determination under clause 35.

Economic regulation – penalties

20. Clauses 41–46 - The Bill imposes sizeable penalties on persons who fail to comply with information disclosure obligations. The maximum amount of pecuniary penalty is \$500,000 for individuals or \$5 million in any other case. Significant penalties, in the context of water services delivery, may be counterproductive. That is, heavy penalties on publicly owned water services providers directly hurt the consumers of water services through potentially increased prices or reduced investment.
21. Recommend that the significance of the pecuniary penalty regime be reconsidered in the specific context of the non-profit objective of publicly owned water services entities.

Establishment of Council-Controlled Organisations ("CCOs")

22. Part 3 (clauses 49–59). The Bill provides a special process for establishing a WSCCO. The process represents a streamlined consultative process compared to the LGA 2002. However, given the stated desire to support local choice, it is not clear why the Bill takes this approach for WSCCOs, but not other vehicles to deliver joint arrangements, such as a joint local government arrangements which may be determined by councils to better meet local preferences and requirements.
23. Recommend the proposed modifications of LGA requirements should apply to any process where a council is creating a vehicle to enable a joint arrangement, not just a WSCCO.

Te Mana o Te Wai

24. Clause 99 - The Bill requires Taumata Arowai to disregard the hierarchy of priorities under Te Mana o Te Wai (as set out in clause 1.3(5) of the National Policy Statement (NPS) for Freshwater Management) when making wastewater environmental performance standards
25. Query whether the intent of Clause 99 was intended.

Treaty settlement obligations and any other existing rights and interests.

26. The Bill offers no clear guidance as to the impact of the proposed legislation on Treaty of Waitangi settlements and obligations.
27. Recommend the Bill provide clarity as to the effect of the Bill on Treaty settlement obligations, or any other existing rights and interests.

Bill 3 - Local Water Done Well

28. Key details on the Government's new approach will not be known until further legislation is introduced later in the year. As such, there are several areas highlighted that have not been addressed in the current Bill.

29. Recommend that the below listed areas are considered for inclusion in the current Bill or through subsequent legislation. These matters are:
- Rights relating to the sharing of information between territorial authorities and WSCCOs, for example, accessing consent related information in joint arrangements.
 - Relationship (if any) between small and private water supplies and networked WSCCOs.
 - Bylaw powers of WSCCOs, including for example in relation to trade waste.
 - Rights and interactions of WSCCOs with other infrastructure networks.
 - Enforcement capabilities for WSCCOs for breach of network rules.
 - Engineering standards for water services.
 - Climate change preparedness.

Upfront support to avoid downstream intervention

30. Clauses 20 – 26 We acknowledge the need to provide for the appointment of a Crown Facilitator for WSDPs or a Crown Water Specialist which would support councils to reaching agreement in joint arrangements to develop and submit WSDPs respectively.
31. Recommend that, in order to reduce the need appointment of a Crown Facilitator or Water Specialist, councils should be given timely support, as soon as possible, through provision of guidance, templates, information, funding and support for building partnerships.

Conclusion

Council thanks the Committee once again for the opportunity to provide a submission on the Bill.

Council requests the opportunity to make an oral submission to the Committee.

Yours sincerely

Nobby Clark
MAYOR