

13 June 2024

The Chairperson and Members
Finance and Expenditure Select Committee
Parliament Buildings
WELLINGTON

By email: fe@parliament.govt.nz

Dear Sir/Madam

SUBMISSION ON LOCAL GOVERNMENT (WATER SERVICES PRELIMINARY ARRANGEMENTS) BILL

Introduction

1. Thank you for the opportunity to submit on behalf of my Council on this important second stage in the Government's Local Water Done Well initiative.
2. I am making this submission in my capacity as Mayor of the Waimate District Council (Council) as the truncated timeframe for submissions meant it was not possible, given all of the pressures on my Council, for the Council itself to be the submitter.
3. My Council has been a member of Communities 4 Local Democracy (C4LD), a group of councils which were opposed to the previous government's affordable water programme. We are firm believers in the need for reform of water services to ensure councils and consumers can gain the benefits which should result from a well-designed reform programme focused on appropriate economies of scope and scale, financial and environmental sustainability, and consumer protection.
4. This submission focuses on three specific issues; the first two concern whether the arrangements contemplated by the Bill as presently framed are capable of successful implementation. The basic premise of this submission is the Finance and Expenditure Select Committee (Committee) has a primary responsibility to satisfy itself the proposed arrangements are feasible, and that the Committee has had before it the information it needs to make an informed decision on feasibility. The third raises the possibility proposed arrangements could block needed innovation.
5. The submission leads naturally to the following recommendations:

On the requirements for preparation of a Water Services Delivery Plan (WSDP)

- a. That the Committee agrees the principal purpose of its consideration of the Bill is to ensure the requirements the resultant Act sets for WSDPs are informed by a realistic and evidence-based assessment of the capacity and capability of individual councils and of councils' inherent powers for generating future revenue.

- b. To this end, the Committee should require the Department of Internal Affairs (DIA) to provide it with an evidence-based report enabling the Committee to make an informed assessment of the capacity and capability of councils to comply with the requirements for the preparation of a WSDP and recommend any changes needed to the current proposals to ensure the requirements for preparing a WSDP are realistic. This should include demonstrating to the satisfaction of the Committee what powers, if any, councils have to underpin the obligation to ensure long-term financial sustainability. This will enable the Committee to determine what changes, if any, it should recommend to the current provisions so that whatever obligations are placed on councils in respect of long-term financial sustainability are within their statutory powers.

In respect of innovation

- a. In order to ensure that the requirements for a WSDP do not unintentionally become a barrier to innovation by locking in particular options for water services delivery, support the inclusion of an additional subsection in section 11 along the lines of “notwithstanding any other provision in this section, or in any legislation affecting the ownership, management and delivery of water services infrastructure, territorial authorities should take active steps to encourage innovation in water services with the objective of encouraging a shift on the part of consumers from dependency on reticulated services to self-sufficiency”.

The substance of this submission

6. If councils are to be able to deliver WSDPs as required, the Bill’s objectives are likely to be achieved, but this list of councils will be few, restricted primarily to those that have their levels of service and assets in ‘ship shape’. If councils lack the requisite capacity and capability, or two or more councils wish to enter into complex negotiations for the establishment of a CCO, there is no prospect of the Bill’s objectives being achieved within the set timeframes, whatever intervention or disciplinary sanctions Government might seek to impose.
7. There are two elements to feasibility:
 - a. The work and resources required for the development and adoption of a compliant WSDP

This element argues my Council (and many others) simply do not have and cannot acquire the capacity and capability to deliver a compliant WSDP within the timeframe required. For my Council, it is not our urban three waters activity that is the challenge, it is the upgrades to the five rural stock water schemes that pose a massive challenge in design, cost, operations and maintenance, all to be considered in the absence of clear regulatory direction.
 - b. Explaining how the Council proposes to ensure financial sustainability

This element explains there is only one way for a council to ensure financial sustainability; put in place enforceable (and irreversible except by the Council itself) long term means of ensuring that customers, many of whom are financially constrained homeowners, meet the costs regardless of their scale or impact. This is both outside existing council powers and anathema to the democratic principles on which local government is based. It also raises a very real question of affordability.

The work and resources required for the development and adoption of a compliant WSDP

8. In terms of implementation, the principal impact of the Bill, if it becomes an Act, will be to impose on councils an obligation to prepare a WSDP with the coverage, to the standards, and in accordance with the timing specified in the Bill.
9. It is common knowledge that councils throughout New Zealand have been under extremely heavy pressure in preparing, dealing with submissions on and deliberating over Long Term Plans (LTPs) for the period 2024-2034. As was recognised in the course of the first reading debate on the Bill, generally the same people who will be involved in preparing a WSDP are also involved in consultation on a major inquiry into Climate Adaptation.
10. Understanding the pressure on councils is important when considering the question of assessing feasibility. The principal advice available to Ministers at the time the Bill was introduced is the Regulatory Impact Statement (RIS) prepared by DIA.
11. The RIS's 'problem' definition paints a dire picture of the state of council-owned water services stating that "Under the current settings, council ownership and delivery of water services is financially unsustainable and not meeting minimum quality standards for communities. Analysis indicates that there is a deficit of at least \$120 billion needed to improve New Zealand's water services." It goes on to identify five root causes including matters such as poor incentives on councils to adequately invest in and fund water services, varied decision-making quality, funding constraints and institutional barriers to more efficient delivery of water services.
12. As something of a qualification to the judgements expressed in the RIS, it does note that "While this RIS was drafted, local councils were in the process of drafting their LTPs prior to public consultation. This meant that there was limited time to engage and test these proposals with councils. As a result, there are no views of consulted stakeholders in this RIS".
13. For forming a judgement on feasibility one element in the RIS is absolutely pivotal. This is the RIS assessment of the impact on councils. Paragraph 262 of the RIS states: "The WSDPs should not require significant resource for most councils to pull together (although it may be more resource intensive for smaller councils with less capacity and capability), as the information is held in current documents."
14. The RIS goes on to set out DIA's estimate of the impact on councils of the requirement to prepare a WSDP, stating:

Low: we have not undertaken any formal cost benefit analysis but estimated FTE requirements for the preparation of WSDPs and endorsement by the council is in the order of:

 - For small councils - one FTE for 40 hours.
 - For medium councils - one FTE for 60 hours.
 - For large councils or joint WSDPs - 80-100 hours
15. As I will go on to outline, these estimates are patently absurd, grossly underestimating the impact on councils. There are two implications both of which should give rise to

very serious concern on the part of the Committee that the objectives of the Bill before it are in any way feasible. The implications are:

- a. First, that the department responsible for developing and implementing the Local Water Done Well policy simply lacks the knowledge and understanding of the reality of council urban and rural water services required to provide advice which Ministers and the Committee can rely on.
- b. Secondly that, by grossly downplaying the impact, it has effectively misinformed Ministers and the Committee on the need to undertake a careful assessment of the extent to which it is realistic to expect councils to deliver WSDPs to the standard and within the timeframe contemplated by the Bill (I do note that it can be inferred from a number of comments in the RIS that officials themselves had significant doubts about whether their advice was well-founded because of the very rushed preparation timing for the RIS).

The Reality Check: a brief overview of what my Council would need to do but will not be able to

16. Section 11 of the Bill sets out a very comprehensive set of requirements virtually all of which will have to be addressed de novo. Matters such as asset management, a description of water services by area, providing for population growth and development capacity, determining details of the capital and operational expenditure required and financial projections cannot be based on current information because the terms of the WSDP significantly change the framework and context. My Council simply does not have the requisite capacity and capability to develop a well-considered, compliant WSDP in anything like the required timeframe, especially if it is required to provide details of each rural water supply within the Waimate District.
17. Nor is it feasible to assume that my Council can simply contract in the necessary capacity and capability. The requisite skills are in short supply, all territorial local authorities will be facing the same situation. Even if people were available, many of the matters a WSDP is required to cover will need good local knowledge, thus significantly limiting the potential to in-source capacity.
18. The problem goes well beyond water services themselves. It's very clear that for councils to make water services financially sustainable as contemplated by the Bill, there will need to be significant trade-offs against other services.
19. This means councils will have to go back to their communities, having recently settled what have been quite difficult and complicated LTPs (or in our case an enhanced annual plan), to tell them that the impact of Local Water Done Well means the council is now entering into a full review of its three waters activity that could eventuate in the establishment of an asset-owning CCO with our neighbours. This type of change management proposal will take far more time than the single FTE investing 40 hours as contemplated in the RIS.
20. I need to reemphasise that the requirements the Bill would impose on my Council, and almost certainly on many others, for the preparation of a WSDP are simply not feasible in the current climate. We forget that there are families in a depressed economic climate at the centre of this and they deserve to be treated with respect. After all they will become the customers and payers of the new service.
21. I note that the Bill contemplates various measures which Government might consider imposing on a council which does not complete a WSDP to requirements and within

the timeframe. The Committee should be sceptical about these provisions; they will run into the same problem any council will face - where are the requisite people, especially when many councils are in much the same position, and how does this overcome the need for local knowledge? How also would a government intervention address the very important question of what trade-offs councils may determine they need to make by cutting back on other current service level commitments.

Explaining how the Council proposes to ensure financial sustainability

22. Two things are implicit in the requirement in section 11(m) of the Bill that a WSDP include “an explanation of what the authority proposes to do to ensure that the delivery of water services will be financially sustainable by 30 June 2028.” The first is that councils will need to start moving towards financial sustainability sooner rather than later, hence the observation above that many councils will need immediately to start making trade-offs by reducing service levels in other parts of their business.
23. The second is that councils will need to have in place enforceable (and irreversible except by the council itself) long term means of ensuring that ratepayers meet the costs regardless of their scale or impact. The reason is simple. Regardless of how councils fund investment and delivery of water services, the costs inevitably fall back primarily on ratepayers (this is even the case with instruments such as development contributions as these ultimately make up the cost of new properties, primarily housing).
24. The current fascination with new ways of accessing capital such as through public-private partnerships or infrastructure finance and funding arrangements misses the point that the resultant service fees, tolls, or levies are also ultimately met by ratepayers. This point was well made recently by the Mayor of the Far North District Council who, speaking of investment in water services, stated “The solutions that are being offered are solutions that we can use, but they’re still not solutions for the end game, which is people who cannot afford the level of investment proposed.”
25. Put the question of affordability aside for one moment. There remains the question of how councils that wish to stand alone can ensure the sustainability of water services for years into the future when sustainability is dependent on imposing rates, charges or other imposts on ratepayers/customers. The intention to do so can be signalled in an LTP, but that is not enforcement. The ability of a council to implement what is proposed in its LTP remains dependent on local democratic support. A council may be able to impose unwelcome burdens on ratepayers/customers during its term, but it cannot bind future councils. Furthermore, imposing unwelcome burdens often triggers the risk of being voted out at the next elections.
26. It is possible that Government could legislate to empower and require councils to put in place long-term financing regimes designed to secure the requisite revenue from ratepayers and ensure those regimes were entrenched against future decision-making. That would be a serious abrogation of long-standing democratic norms.
27. I turn now to the question of affordability. One standout feature of the feedback we received at our enhanced annual plan submission hearings this week is that current rate burdens are becoming simply unaffordable.
28. There is both some data, and increasing anecdotal evidence, which supports the proposition that the practice of imposing further imposts on ratepayers, especially

homeowners (whether as rates, charges, levies, tolls...) is close to or at its limit (and customers for water services are very often also ratepayers).

29. The Retirement Commission undertakes an annual survey of the financial capability of New Zealand households. The press report accompanying the results of its 2023 survey had this to say:
 - The annual survey by the Retirement Commission found the number of people in financial difficulty increased by 17 percent since their first survey in 2021.
 - A total of 55 percent reported being in a financially difficult position.
 - Of those surveyed, 51 percent reported they were 'starting to sink' or 'treading water', while a further 3.5 percent reported they were 'sinking badly'.
30. Reverse mortgage providers (raised by our annual plan submitters this week, and not an option my Council would ever recommend) report an increasing number of inquiries from homeowners who simply cannot afford to pay their rates out of current cash flow.
31. My Council recognises there is a need for hard data to test whether the anecdotal evidence, and the Retirement Commission's snapshot of what's happening with all households, not just homeowner households, is supported by actual evidence of what's happening with affordability, that is, how ratepayers respond when they cannot afford both their rates and other non-compulsory but essential expenditure at the same time (for example, food, heating, insurance, healthcare and education). We are joining with other councils in the hope that the sector will collectively fund a study for which we already have an acceptable proposal.
32. In the meantime, I strongly urge the Committee, in considering the Bill, to recognise that at its heart is the proposition the Government's objectives for Local Water Done Well are dependent on requiring councils to impose unacceptable burdens on their ratepayers. This means acknowledging the need for and ideally proposing practical options to mitigate the otherwise unacceptable burdens.

The risk proposed arrangements could block needed innovation

33. The requirements for a WSDP can be read as placing a strong emphasis on determining the main components and technologies for all three waters for at least the next 10 years if not longer.
34. There are strong parallels between New Zealand's water services and its energy sector in the sense that each relies on major units to create, store, distribute or otherwise deal with elements which are critical for the economic, social, environmental, and cultural wellbeing for all New Zealanders. A principal difference is that the energy sector is ahead of the water sector in terms of regulatory oversight and performance monitoring.
35. Both sectors face enormous capital costs if they continue to operate along broadly the same major infrastructure assumptions as they do at present.
36. The energy sector has recognised this. There are now major initiatives underway not just to diversify into different forms of renewable energy generation, but, perhaps more importantly, to shift consumers from being grid dependent to self-sufficiency. The necessary technology is already available; the main challenge is encouraging uptake which means embedding behaviour change, removing regulatory barriers, and developing new financial models for individual consumers (already well in hand).

37. The same possibility exists for three waters. There is already considerable experience with technologies which would enable households to be close to self-sufficient - no water in and no water out.
38. For that to happen will require both leadership from water service providers and a flexible investment and regulatory environment which does not place barriers in the way of change. Under the present approach to Local Water Done Well barriers can come in at least two ways. The first is an inflexible regulatory framework which the present approach is likely to deliver.
39. The second is the incentive on water service providers actively to resist innovation as they will want to sell as much water and earn as much from other water services as they can in order to service the debt they have in place to support their asset base. Addressing this is discussed in the next section, what to do.

What to do?

40. On the question of feasibility, the answer is both simple and difficult. The Committee should insist, despite the Government's apparent determination to force this legislation through, that further consideration of the legislation should be delayed until DIA has done two things:
 - a. A full and realistic assessment of what the impact on councils will be of the requirements to prepare a WSDP, and how that impact is managed so as to minimise any negative impacts. In doing so, DIA should be satisfied, and seek to satisfy the Committee, that councils will indeed be able to prepare compliant WSDPs. As part of that, DIA should have the option of recommending a less extensive and intrusive process.
 - b. Considered the implications of the requirement on councils to explain how they will ensure that the delivery of water services will be financially sustainable by 30 June 2028.

This should include considering precisely what would be needed for that purpose, who the ultimate payers will be - substantially homeowners ratepayers and to a lesser extent renters - and what evidence exists to demonstrate that burden will be and remain affordable. For this purpose, affordability should be understood as being able to pay rates (or water charges) whilst also meeting all other normal non-compulsory essential expenditures such as insurance, heating, healthcare and adequate healthy food (there is anecdotal evidence that a number of ratepayers are already cutting back significantly in areas such as these).
41. DIA should also be asked to advise the Committee, given councils will be required to explain how they will ensure water services are financially sustainable long-term, what if any mechanisms are available to councils for doing so and whether these would involve one council seeking to bind future councils.
42. This advice should assist the Committee to determine whether Section 11(m) can remain as it stands. If the DIA advice does not establish that there are available and enforceable mechanisms to achieve the intent of Section 11(m), then it should be rewritten inviting councils to spell out what measures they believe they and their successors will need to put in place to ensure financial sustainability, and what the impacts of doing so will be on ratepayers/consumers.

43. Finally on feasibility, DIA should be able to demonstrate to the Committee that its assessment and recommendations on how the impact both on councils, and on ratepayers, should be managed, has been consulted on with and has the support of the local government sector.
44. The Committee could resume hearings once DIA had provided a report on proposed changes to the Bill resulting from its assessment, and that report had been made publicly available for a brief period of further public submissions.
45. On the question of innovation, the Committee is asked to ensure any risk of the requirements for a WSDP becoming a barrier to innovation should be addressed in its report. This could be done by including an additional subsection in section 11 along the lines of “notwithstanding any other provision in this section, or in any legislation affecting the ownership, management and delivery of water services infrastructure, territorial authorities should take active steps to encourage innovation in water services with the objective of encouraging a shift on the part of consumers from dependency on reticulated services to self-sufficiency”. The Waimate District Council has installed domestic water meters to measure and mitigate water loss and will embark on a programme of education on ‘treating water as a precious resource’, including the encouragement for the installation of rainwater tanks at each dwelling for emergencies and outdoor use.

Conclusion

46. The substance of the submission can be summed up in a single proposition; it is the role of the Committee to ensure the arrangements in place for implementing the Government’s Local Water Done Well policy are both grounded in a realistic understanding of the capacity and capability of the communities it will serve and will not exacerbate already existing serious problems of affordability of council rates and charges. To do otherwise is to risk the failure of the reform programme itself.

Further Information

47. For further information or to answer any questions about this submission, please contact me on MayorCraigRowley@waimatedc.govt.nz or 027-839-7413.

Yours sincerely



Craig Rowley
MAYOR