



---

# DID THE SELECT COMMITTEE ACCEPT OUR RECOMMENDATIONS?

## Water Services Entities Bill

In July 2022, LGNZ made a comprehensive submission on the Water Services Entities Bill to the Finance and Expenditure Select Committee that set out our members' concerns with that Bill. Our submission included a large number of recommendations, many of which have been adopted by the Select Committee. These include steps towards addressing concerns around local accountability and voice, and increased support for councils' placemaking functions.

The Select Committee approved its recommendations by majority, which was made up of the Labour Government representatives. Other political parties expressed strong minority views on many aspects of the reform.

This table compares our recommendations to the Select Committee's report:

## COUNCILS' PLACEMAKING ROLE

As many of our members highlighted, placemaking is a critical function of councils. Ensuring water services entities (**WSEs**) would support councils' placemaking functions was a priority in our submission – WSEs should be plan takers, not plan makers. We recommended expressly incorporating placemaking considerations into WSEs' operating principles. We also wanted transparency around WSE decision-making, and a clear obligation to set out how the WSE had considered council and community input in the planning processes.

Almost all our recommendations have been adopted, and the Committee expressly recognised that WSEs should be plan takers. Amongst other recommendations, WSEs would now have to state how council and community input was considered in planning documents, providing another level of transparency and accountability. We will be assessing subsequent Three Waters legislation (and potentially resource management-related legislation) to see whether this intent around WSEs being plan takers is picked up.

What we said	What the draft report says	Yes/No
<b>Clause 11: Objectives of the water services entities</b>  We recommended expanding the objectives of a water services entity to include supporting 'council performance and delivery of local placemaking functions in support of community wellbeing, as evidenced by the long-term plan and annual plan'.	<b>Adopted in part.</b>  The SC recommends expanding the WSE objectives to include 'supporting and enabling <u>planning processes</u> , <u>growth</u> , and housing and urban development'.	✓
<b>Clause 13: Operating principles</b>  We recommended expanding the obligation for WSEs to partner and engage with councils and their communities to include: <ul style="list-style-type: none"> <li>i. Seeking to align the planning functions of the WSE with the broader placemaking planning functions of a territorial authority; and</li> </ul>	<b>Not adopted.</b>  However, the combination of mandating engagement with councils under 13(f) and the addition of an objective focused on planning processes and growth under 11(c) should result in appropriate alignment between councils and WSEs.	X

ii. Having to explain and resolve areas of conflict or an absence of alignment about a material matter.	Although there is no recommendation requiring a clear obligation to 'explain and resolve' conflicts between planning processes and WSE priorities, the council engagement obligations should result in dialogue that will mean potential conflicts can be identified and worked through.	
<b>Clause 13: Operating principles</b>  We recommended that an additional WSE operating principle be added that ensures any approach adopted by the WSE be aligned with other planning and approval processes, to avoid duplication of effort.	<b>Not adopted.</b>	<b>X</b>
<b>Clause 57: Membership of board</b>  We recommended that board members should have knowledge of, and experience and expertise in relation to 'local government, including its role and functions'.  We also recommended that the requirement to have experience with 'network infrastructure industries' be expanded to explicitly <b>include</b> 'water-related network infrastructure'.	<b>Adopted in part.</b>  The SC recommends adding 'perspectives of local government' as a required competency of both the board and the board appointment committee.  The SC also recommends inclusion of reference to water services network infrastructure industries as being the kind of experience board members need to have.	✓
<b>Clause 115: Safeguarding independence of water services entities</b>  We recommended clarifying that councils' placemaking decisions (if adopted by a WSE) would <i>not</i> constitute a direction to the WSEs.	<b>Adopted in part.</b>  Although the SC recommends adding: 'nothing in this section affects the performance or exercise of a territorial authority's regulatory duties, functions, or powers under legislation other than this Act', this does not provide the 'safe harbour' we were looking for.	✓

<p><b>Clause 149, 152 and 155: Water service entity planning documents</b></p> <p>We recommended that each of the water service entity planning documents (i.e. the funding and pricing plan, asset management plan and infrastructure strategy) should show how council and community input was considered and incorporated.</p>	<p><b>Adopted in full.</b></p> <p>SC recommends that all three plans should detail how council and community input was addressed and incorporated into the plans.</p>	<p>✓</p>
<p><b>Clause 174: Meaning of ‘problem’</b></p> <p>We recommended expanding the definition of a ‘problem’ that would entitle the Minister to intervene in the WSE affairs to include any matter, circumstance or failure that would have adverse consequences for a council in the performance of their roles and functions under the Local Government Act 2002.</p>	<p><b>Adopted in part (indirectly).</b></p> <p>The SC recommends an express ability for territorial authorities request Ministerial intervention (see clauses 175, 177 and 179).A ‘problem’ already includes any adverse event impacting a WSE’s ability to give effect to its purpose and the SC recommends expanding the purpose of a WSE to include supporting and enabling ‘planning processes, growth and urban development’ which is another avenue for intervention if a council’s role in these areas is being materially and adversely impacted by a WSE.</p>	<p>✓</p>
<p><b>Clause 196: Comprehensive review of water services legislation</b></p> <p>Under clause 196, the Minister must review certain legislation and other arrangements (after nine years) to determine the effectiveness of the water services legislation. We recommended that the Minister should also review councils’ performance of their roles and functions under the Local Government Act 2002 (e.g. to</p>	<p><b>Not adopted.</b></p> <p>However, clause 196 allows the Minister to review ‘any other relevant matters’.</p>	<p>X</p>

see the impact of the water services legislation on these functions).		
<b>STORMWATER</b>		
<p>We were concerned that the proposals for stormwater were underdeveloped so we recommended a cautious, phased approach to its transition where that suited councils. We had concerns around the retention of council staff (if stormwater is transitioned), and recommended the Bill permit use of ‘hybrid arrangements’ where WSEs could contract the provision of stormwater related services to councils.</p> <p>The Select Committee did not directly address these concerns but deferred them to when stormwater transition provisions in a subsequent bill are considered.</p>		
What we said	What the draft report says	Yes/No
<p><b>Clauses 117 and 118: Contracts relating to the provision of water services</b></p> <p>Currently, WSEs can enter into contracts relating to the provision of water services, or a joint arrangement for the purpose of providing water services. We recommended expressly including an ability to enter into ‘hybrid arrangements’ with councils to accommodate the special (dual) character of many stormwater assets. We recommended that the councils would retain ownership of the asset (if the <i>primary</i> purpose of the asset was not stormwater), but WSEs could have active involvement for the maintenance and management of the asset.</p>	<p><b>Not adopted.</b></p> <p>The SC recommends continuing on the current track and approach (i.e. carrying forward the LGA position) but for the term of such contracts to be less than is currently allowed (reducing the maximum term from [30] to [15] years).</p>	X

## TE MANA O TE WAI | TE TIRITI O WAITANGI

We supported the approach to Te Mana o te Wai Statements, but recommended they be incorporated into transitional arrangements (i.e. during the WSE establishment period). We also asked for clarity around exactly *who* must give effect to Te Mana o te Wai, and te Tiriti of Waitangi. Finally, we recommended central government ensure iwi/Māori are appropriately resourced to participate in the system.

The Committee did not expressly address these concerns. It did expand the application of Te Mana o te Wai to include geothermal and coastal water bodies.

## GOVERNMENT POLICY STATEMENT | CENTRAL INVESTMENT

We pointed out that, if central government expected to retain a degree of control over priorities and direction setting, then financial support needed to follow – to avoid there being an unfunded mandate. We recommended the Government contribute to: costs incurred with establishing the new model; funding meaningful participation by mana whenua representatives on the RRG; and the cost of remediating historic infrastructure deficits.

The Select Committee did not directly address these concerns. The Committee has recommended expanding the scope of what the Government Policy Statement might address to include setting expectations in relation to planning, local procurement, and local employment. Depending on its use, this could be in conflict with the position a local council has adopted on these matters and the scope a WSE has for its own operational decision making

What we said	What the draft report says	Yes/No
<p><b>Clause 26 of Schedule 1: Crown expenses and capital expenditure recoverable from water services entity</b></p> <p>Clause 26 of Schedule 1 sets out when a WSE must reimburse the Crown for any capital expenditure relating to establishment of a WSE made before, during or after the establishment date. We were concerned that this creates an ‘unfunded mandate’, allowing</p>	<p><b>Not adopted.</b></p>	<p><b>X</b></p>

the Government to recover expenses when its choices have often been a material contributor to current infrastructure deficits. We recommended removing the provision.		
<b>Clause 131: Preparation or review of Government policy statement</b>  Under clause 131, the Government must engage with certain groups when preparing its policy statement. We recommended including a standalone reference to councils.	<b>Not adopted.</b>  However, we note the Government Policy Statement may now include expectations around planning processes, growth and housing and urban development.	<b>X</b>

## REGIONAL REPRESENTATIVE GROUPS

Regional Representative Groups (**RRGs**) will be ‘core machinery’ used to ensure local voice sets the parameters and priorities for WSE operational decision making. Our recommendations focused on ensuring an equitable mix of RRG council representatives from across the rural, provincial and urban areas. This has been agreed to by the Select Committee. It has recommended that there be processes to ensure a mix of metropolitan, rural and provincial council representatives on RRGs.

While a number of our more minor recommendations were not adopted, the following SC recommendations reflect our feedback:

- that WSE constitutions *must* ensure an equitable distribution of council representation – the upcoming constitution development process will provide a forum for local council representatives to have input into just how those selections will be made, and on what basis, and for these to then be enshrined in the constitution;
- the cap on RRG membership is removed, which provides scope for greater representation on the RRG itself;
- the RRG must now seek the advice of Regional Advisory Panels (**RAPs**) – representing geographic sub-areas or ‘like-type’ areas with similar perspectives and issues - when developing the statement of strategic and performance expectations, which should further enhance local voice and accountability; and
- WSE constitutions must set out a procedure for one or more meetings each year of all the territorial authority owners, which is another move towards greater and broader public accessibility and accountability.

What we said	What the draft report says	Yes/No
<p><b>Clause 29: Collective duty of regional representative group</b></p> <p>We were concerned that interest groups could argue a decision favoured one existing or future group of consumers/communities over another, and use that to challenge a decision. We recommended clarifying that the RRG retains discretion to determine this weighting.</p>	<p><b>Not adopted.</b></p>	<p><b>X</b></p>
<p><b>Clause 32: Method of appointing territorial authority representatives to regional representative group</b></p> <p>We recommended ensuring RRGs have a spread of urban, provincial and rural council representation.</p>	<p><b>Adopted in full.</b></p> <p>The SC recommends removing the maximum cap on RRG representation (allowing (if required) representation of more councils or representatives of a greater range of 'like-type' councils within the WSE area) and requiring an equitable and reasonable representation mix of metropolitan, provincial and rural authorities.</p>	<p><b>✓</b></p>
<p><b>THE ROLE OF REGIONAL ADVISORY PANELS</b></p>		
<p>We think RAPs could be used to ensure local voice gets fed into the WSE priority-setting and governance/accountability arrangements. Previously, RAPs had to act in the interests of the entire WSE service area, reducing their ability to advocate for a specific sub-area or the interests of a group of 'like-type' areas. We recommended that this obligation be removed and that RAPs be able to advise on RRG decisions both <i>before</i> and after they are made.</p> <p>The Select Committee has adopted these recommendations.</p>		
What we said	What the draft report says	Yes/No



<p><b>Clause 46: Role of regional advisory panel</b></p> <p>We wanted to ensure that RAPs provided enough coverage of sub-areas and issues to capture – and feed into the RRG - as much local voice as practicable so that all key stakeholder groups had a channel into the RRG.</p> <p>We recommended ensuring a RAP can provide advice on prospective decisions of the RRG, as opposed to just commenting on decisions already made.</p>	<p><b>Adopted in part.</b></p> <p>The SC recommends that the number and scope of RAPs neither be mandated nor restricted but that a RAP should be able to advise on RRG decisions <i>yet to be made</i> and on ‘how the [RAP] considers the RRG <i>should</i> perform or exercise its duties, functions or powers’.</p>	<p>✓</p>
<p><b>Clause 47: Collective duty of regional advisory panel</b></p> <p>As introduced, the Bill required RAPs to carry out their functions for the benefit of the <i>entire</i> WSE service area. If RAPs are going to address sub-areas in, or advise on particular issues relevant to, the WSE service area and channel local needs or concerns into the RRG, we recommended that they should be able to perform such an advocacy role.</p>	<p><b>Adopted in full.</b></p> <p>The Committee notes that owing a duty to the entire service area could constrain diverse views. The Committee recommends removing the duty, and instead requiring RAPs to take into account the entire WSE service area <i>only if it is reasonably practicable to do so</i>.</p>	<p>✓</p>
<p><b>Part 2, Subpart 5: Regional Advisory Panels</b></p> <p>We wanted the Bill to <i>expressly</i> contemplate council-specific RAPs, and to give mana whenua an option to have no representation on a council specific RAP.</p> <p>We also recommended that, if appropriate to its role or scope of work, a non-voting council observer could be appointed to a RAP.</p>	<p><b>Not adopted.</b></p> <p>However, the current wording would permit council specific RAPs, it is just not expressly provided for. A council specific RAP will still need equal mana whenua and territorial authority representation.</p> <p>Our concerns around conflicts between WSE investment and council placemaking are somewhat addressed by expansion of the WSE objectives (i.e. to now support planning and growth).</p>	<p>X</p>

## WSE BOARDS AND COMPOSITION

Given the absence of direct council representation at the WSE board level, we wanted to ensure board members would collectively have local government and urban development experience. We also recommended that board meetings be ‘public’ by default, to enhance public accessibility and accountability.

The Committee has adopted both of these recommendations.

What we said	What the draft report says	Yes/No
<b>Clause 57: Membership of board</b>  We recommended that the board’s collective competencies include experience with local government and broader urban growth/development.	<b>Adopted in full.</b>  The Committee recommends the board collectively has expertise in relation to the ‘perspectives of local government’, and ‘consumers and communities’.	✓
<b>Clause 60: Board must hold two public meetings each financial year</b>  We recommended that board meetings are public by default.	<b>Adopted in full.</b>  The SC recommends that WSE boards be made subject to Part 7 of the Local Government Official Information and Meetings Act 1987, creating a presumption of public attendance unless the board satisfies one of the requirements to exclude the public.	✓

## TRANSITION AND IMPLEMENTATION

Under the Bill as introduced, the department chief executive has powers of oversight and review of decisions made by councils during the transition period if they would undermine the interest of the new WSE. We submitted that this did not signal trust in councils, and could stifle councils’ ability to carry out their functions over the

establishment period. We recommended that these powers should be limited to where a council deliberately seeks to undermine the reform objectives. We also wanted to ensure council senior managers would be offered employment opportunities, as signalled to councils by the Government early in the reform process.

Our recommendations have not been adopted.

What we said	What the draft report says	Yes/No
<p><b>Clause 1, Schedule 1: Interpretation</b></p> <p>We recommended defining ‘senior management’ as a senior executive manager role that does not involve technical expertise in a three waters service on a day to day basis.</p>	<p><b>Not adopted.</b></p> <p>The Committee recommended clarifying that an employee’s position will relate primarily to the delivery of water services if more than 50% of their time is spent undertaking duties and responsibilities that primarily relate to, or primarily support, the delivery of water services.</p>	X
<p><b>Clause 21, Schedule 1: Decisions subject to department’s oversight powers</b></p> <p>We recommended excluding decisions made by local government organisations that:</p> <ul style="list-style-type: none"> <li>i. relate to its compliance obligations under legislation;</li> <li>ii. relate to repairs or responding to unexpected circumstances in a manner consistent with general practice; or</li> <li>iii. relate to the re-prioritisation, altering or acceleration of activities already contemplated under its long-term plan provided the local government organisation believes it is not something that would raises concerns of the kind</li> </ul>	<p><b>Not adopted.</b></p>	X

stated in clause 23(3) of Schedule 1 (i.e. contrary to the reform objectives).		
<b>ADDITIONAL RECOMMENDATIONS</b>		
<b>What we said</b>	<b>What the draft report says</b>	<b>Yes/No</b>
<b>Clause 13: Operating principles</b>  We were concerned that WSEs would favour large multi-national corporations when making procurement decisions. We recommended imposing a preference for local contractors for scheduled and 'reactive' works to maintain capacity and capability (and quality work and training opportunities) in local communities.	<b>Adopted in part.</b>  The Committee recommends requiring WSEs to 'have regard to the areas where services are delivered to consumers and communities' and 'ensure that there is capability in, and an understanding of, the local cultural or environmental factors' when making procurement decisions.	✓