

5 July 2023

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Christchurch City Council submission on the Water Service Entities Amendment Bill

Thank you for the opportunity to make a submission on the Water Services Entities Amendment Bill (the Bill).

Introduction

1. The proposed amendments to the Bill are not minor. We were concerned by the tight timeframe for making submissions on this Bill, which will substantially change councils' roles and responsibilities. While we have considered the amendments and have provided comment, we have not had sufficient time to consult, understand the impacts, and consider our response at anything but a high level.
2. We endorse the points made in the Local Government New Zealand submission relating to the need for broad local government input to the establishment of the first entity, as it will set precedents for all other entities; the need for clarification of DIA's oversight powers; and the concerns around better off/no worse off funding. The issues raised around billing arrangements are also valid.
3. Christchurch City Council (the Council) wants to acknowledge the improving clarity and strengthening of intent in the following areas:
 - a. Development Contributions
 - b. Relationship Agreements
 - c. Community Priority Statements
 - d. Clarification of transfer for Council Controlled Trading Organisations.
4. We are concerned at the operational impact of delayed implementation on our staff, this includes impact on their working conditions and morale along with our ability to recruit and retain specialist staff. There is also an impact on our current processes such as Long Term, and Annual planning. Our submission includes some comments and recommendations that may be considered outside the scope of this amendment but outlines the risk and potential unintended consequences of the amendments to the Bill.

Overview of Submission

5. Comment forming the Council's submission is attached and explains our recommended changes in more detail for the Select Committee's review. As noted, the consultation period has not allowed us to undertake a detailed review and this submission should be read as an extension to our submission of 17 February 2023 on the Water Services Entities Bill.
6. In our view the Select Committee should look to:
 - a. Provide further clarification on the management of integrated stormwater networks.
 - b. Provide clarification of the framework for entity establishment and formal operation.
 - c. Refine amendments to ensure meaningful community input and consider the community impact on rating following entity establishment and operation.
 - d. Clarify requirements for planning and consider enhancing direction around workforce transition in response to an extended implementation program.

Conclusion

7. We have previously expressed our concerns around the Three Waters reform program and continue to do so. We remain strongly opposed to stormwater being included in the reform at this time. Even with up to an additional two years to work through the complexities inherent in stormwater service provision, we believe a more considered and nuanced approach is needed that best suits individual communities.
8. It is our hope that there is time for meaningful consideration of our feedback and that it will support the provision of greater clarity and consequently more effective operation of the entities when established.

Thank you for the opportunity to provide this submission.

For any clarification on points within this submission please contact David Griffiths, Head of Strategic Policy and Resilience (David.Griffiths@ccc.govt.nz).

Yours faithfully



Dawn Baxendale
Chief Executive

Christchurch City Council submission on the Water Service Entities Amendment Bill

Integrated Stormwater and Flood Protection

1. We request all previous submissions on the inclusion of stormwater and the associated challenges are considered again as part of this process. We remain concerned about the lack of clarity and impact of the current intent in the Bill, due to high levels of integration of assets with a stormwater function with other services in Christchurch. This is especially relevant for the intersection between stormwater and flood protection.
2. The treatment of the Christchurch Drainage Act 1951 and transition arrangements remain unclear at time of writing. We understand that if this Act is repealed and urban waterways are included, then the distinction between storm and flood assets and how they are treated becomes even more critical.
3. Our urban waterways are recreational assets, and so if included need to be considered as mixed-use assets as with property. Public access for recreational use, including opportunity for future enhancements must be protected.
4. We also want to bring your attention to the operational implications of removing all Three Waters staff to the Water Services Entities while requiring councils to retain and manage flood protection in an environment with an ongoing shortage of qualified staff.

Relationship Agreements – Dispute Resolution

5. We recommend that mediation is specified as a mandatory step prior to arbitration.

Mergers

6. There is a lack of certainty around some of the provisions for mergers. Our comments and technical recommendations are included at the end of this document.

Shared Services

7. We appreciate the provision for the use of shared services where appropriate, noting that there may be an opportunity for councils to investigate this independent of entity establishment.
8. We recommend that provision is made to novate any existing Three Waters shared service contracts to the Entity on establishment.

Community input and impact

Community Priority Statements

9. As a Council we are mindful of our obligations to our communities with respect to ensuring that we have appropriate mechanisms in place to understand the concerns and priorities of those communities.

10. We are unclear what Community Priority Statements will achieve in practice. The only mandatory requirement is subclause (2), which requires the regional representative group to forward the statement to the consumer forum established under s 207 of the WSA. Subclauses (3) and (4) are expressed as permitting the regional representative group to consider the statements ("*...may consider...*") but does not make this a mandatory requirement.
11. We are concerned that in this form the establishment of Community Priority Statements may simply create more work for the regional representative group (in having to receive and forward on such statements) without achieving any meaningful engagement.

Charging for water services/rates

12. This Council recovers Three Waters costs largely through capital value-based rates. Under volumetric charging there is going to be a very significant change in allocation of costs between households. This is likely to require some financial adjustment for families and potentially increased hardship for many.
13. We recommend that consideration is given to the timing, implementation, and communication of significant change due to entity establishment to communities.

Interim requirements and impacts for Councils

Disadvantage

14. We note that the delay in establishment of some entities will result in differing timelines for staff transfer under the Legislated Job pathways. It is possible that early negotiation and agreement of a 'Waters Services Entity' Collective Employment Agreement could disadvantage staff where entities transfer later.
15. We are concerned about the potential impact on our staff who may perceive inequities and the consequent recruitment and retention challenges that may result in a sector where recruitment and retention is already challenging.
16. We recommend that consideration is given to incorporating a mechanism in the Transitional provisions relating to employment specific to staff who continue to work for territorial authorities from 1 July 2024 until establishment of their relevant entity. This provision should ensure that on transition any disadvantage experienced by those staff in relation to salary and conditions during that period is addressed.

Planning

17. The proposed legislation (clause 28.6) calls for councils to at least maintain the level of service (LOS) provision that existed in 2023/24.
18. However, it also states (clause 32b) that no information on levels of service is required in the period of (up to) two years covered by the Long-Term Plan (LTP).
19. In practice this would mean that Three Waters LOS are not reported in Annual Reports arising from the 2024 LTP.
20. We are not clear on how the council will know that LOS have been maintained at 23/24 levels if this reporting does not occur.

21. We recommend, for completeness, that along with current levels of service, current levels of reporting are maintained within council processes for Three Waters services until transition to the new entity occurs.

Deferral of bylaw reviews

22. The proposed amendment extends the timeframe for deferral of bylaw reviews to 1 July 2026. This means that all entity areas will have the same transition period, irrespective of their establishment date. This is perhaps an unintended consequence of the change to the definition of “transition period”. We recommend the timeframe requirements are reinstated as previously drafted (linked to the establishment date).
23. Additionally, we question whether the deferral provision is even necessary or the right approach. It would be more efficient for the legislation to make all water services bylaws due for review between now and the establishment date continue in force, rather than enabling councils to individually defer the review of the bylaws.
24. The concept of formally reviewing a bylaw after a deferral is flawed. Councils will no longer have responsibility for the bylaws by this stage, as entities will have assumed responsibility for them from 1 July 2026 (or earlier) (see insertion to LGA Schedule 1AA– clause 25(4) of the WSA).

MERGER: Recommendations on proposed insertion into the Water Services Entities Act, new subpart 1A/ Schedule 2A

4	What the Regional Representative Group must do after receiving request		
		Comment:	We recommend:
(c)	Engage with the boards and regional representative groups of every water services entity about the request for a merger proposal.	<ul style="list-style-type: none"> • This requires engagement with a significant number of groups, not just those groups that are directly affected by the merger proposal (i.e., the obligation is to engage with "<u>every</u>" listed group). • A potential issue is the lack of guidance as to what is meant by "engage". For example, it is unclear if this is intended to impose a different obligation to, for example, "consult". • There are no timeframes expressed. This raises the prospect that a party is placed under considerable time pressure to respond if the timeframe is too short. It also creates a potential point of conflict (and risk) if a party asserts that the timeframe requested for responses is too short (having regard to Council's potential obligation to consult with communities). 	<ul style="list-style-type: none"> • That the clause should provide a minimum period to be allowed for responses. Alternatively, given the potential variables involved with setting a minimum time, this could be expressed as a "reasonable" period of time, having regard to the consultation obligations of the parties to be engaged with.
(e)	Make (in accordance with section 30) a decision of the group about whether the entity's board should prepare a merger proposal.		That this be amended to make clear that any decision whether to prepare a merger proposal should take into account any changes made to the request for a merger proposal under 4(d).

6 When an entity's board must prepare merger proposal			
		Comment:	We recommend:
(1)	This clause applies if a regional representative group's decision under clause 4(e) is that the entity's board should prepare a merger proposal.		This is amended to clarify that this clause only applies if the regional representative group of all entities proposed to be part of the requested merger have voted in favour of preparing a merger proposal. This is to avoid an outcome where a merger proposal must be prepared in circumstances where the other party(ies) have decided against preparing a proposal.
(2)	The entity's board must prepare a merger proposal.		A timeframe should be included for the preparation of such a proposal.
16 Merger implementation board and apportionment of costs			
		Comment:	We recommend:
(b)	Agree how to apportion the costs associated with the merger (including any costs associated with the merger implementation board).	We assume this will be by a simple majority vote.	Clarifying the method of agreement.