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Combined submission of Wellington City Council, Hutt City Council, Porirua City Council, Upper Hutt City Council, and Greater Wellington Regional Council (Councils) with Iwi mana whenua partners Te Rūnanga o Ngāti Toa and Taranaki Whānui ki Te Upoko o Te Ika / Port Nicholson Block Settlement Trust (Iwi Partners) on the Local Government (Water Services) Bill (Bill)

INTRODUCTION

The Councils and South Wairarapa District Council currently provide water services to their communities through a jointly-owned council-controlled organisation (**CCO**), Wellington Water Limited (**WWL**), in which they are each shareholders. This is the only joint water services CCO currently operating in New Zealand.

The Councils have provisionally decided that their preferred option for water services delivery under *Local Water Done Well* is a joint asset owning CCO owned by the Councils which would provide three waters services to nearly a half million people. This is subject to consultation which is scheduled to be carried out in March - April 2025. If this preferred option is confirmed, WWL in its current form will be disestablished and replaced by the new joint CCO. That CCO will be a water organisation (**WO**) as defined in the Bill.

This submission is made with a particular focus on the Bill's provisions as they will affect WOs. The submission is informed by the Councils' experience as the owners of WWL, and a significant programme of activity to develop a joint water services delivery plan and establish a new WO.

We are motivated to have simple, clear and manageable institutional arrangements, accountabilities, regulation and transitional arrangements. This is important not only for the success of the water reforms themselves, but also to enable our communities to thrive once the reforms are in place.

We thank the Finance and Expenditure Select Committee for the opportunity to submit on the Bill, and would appreciate the opportunity to address the Committee in person.

PART 1 – OVERVIEW AND KEY MATTERS

Part 1 of this submission summarises the seven key matters that the Councils wish to raise. Part 2 is a table which comments on the Bill clause-by-clause and contains recommended changes, including in relation to the key matters in Part 1.

While the Councils and their Iwi Partners generally support the Bill, drawing upon our practical experience we have a number of key concerns:

1. The Bill needs to set broader and stronger objectives for water services providers (WSPs) to reflect broader growth, environmental and social outcomes, as well as relationships with iwi/Māori;
2. The Bill gives territorial authority (TA) shareholders extensive control over WOs, which conflicts with the rationale for establishing a WO and blurs accountability to communities for the provision of water services;
3. The Bill needs to strengthen and define the relationships all WSPs, including WOs, are expected to have with iwi/Māori, and to give effect to the principles of the Treaty of Waitangi/Te Tiriti o Waitangi and Te Mana o te Wai;
4. The Bill should strengthen its current protections against future privatisation of water services;
5. The Bill should be simplified to reduce unnecessary complexity and compliance costs for WSPs, and WOs in particular;
6. The Bill should not require the Councils to enter into a transfer agreement with a WO within 6 months; and
7. The Bill's provisions regarding works on private land will hinder infrastructure provision.

The submission elaborates on these points below.

Achieving the objectives of Local Water Done Well (LWDW)

The Councils support the fundamental objectives of LWDW: namely to keep water assets in local ownership; give councils choice as to how they wish to organise their water service delivery going forward; and provide a clear regulatory framework within which all WSPs will operate.

The second step in this Government's reforms (after the repeal of legislation passed in the previous parliamentary term), was the Local Government (Water Services Preliminary Arrangements) Act 2024 (**Preliminary Arrangements Act**). The Preliminary Arrangements Act advanced LWDW objectives by establishing a process for communities to select, on an informed basis, their preferred water services delivery model or arrangements, and to prepare and adopt a water services delivery plan (**WSDP**). All possible delivery models – in-house council delivery, a CCO (single council or jointly owned), or a consumer trust – involve council or community ownership (either direct or indirect) of the water services infrastructure currently owned by TAs (and, in the case of the Wellington region, Greater Wellington Regional Council).

The Councils are concerned, however, that in several important respects the Bill is inconsistent with, and potentially undermines, the Government's own policy objectives for LWDW, and to some extent undoes what has already been legislated for in the Preliminary Arrangements Act.

If enacted in its current form, the Bill will have a significant negative impact on all WSPs but especially WOs and impair their ability to operate successfully and achieve their statutory objectives as stated in the Bill. The Councils urge a review of the Bill's overall approach to ensure alignment with the original objectives of LWDW and the Government's wider objectives, including supporting economic growth.

TA ownership of water services infrastructure in New Zealand has generally resulted in under-investment in water services, leading to myriad problems ranging from failure to provide safe drinking water, to recurring network failures and shutdowns, to planned urban development being stymied though lack of infrastructure. While LWDW relies, in part, on regulation through the Water Services Authority / Taumata Arowai (**WSA**) and the Commerce Commission to address these issues, before any regulatory intervention occurs, competent professional

governance of water services is also required. The Bill should restore an appropriate focus on delivering safe, reliable and financially sustainable water services by removing from the Bill unnecessary or excessive prescription and control of WOs by their shareholder councils as this will blur and undermine accountabilities. Local control over water services provision does not guarantee the provision of safe, reliable and financially sustainable water services: stronger provisions in the Bill are needed to help ensure that, whatever form of service provision has been chosen by TAs following consultation on their WSDP, these outcomes are achieved across New Zealand.

We now turn to the seven key matters the Councils wish to raise.

1. **The Bill needs to set broader and stronger objectives for WSPs**

The objectives in the Bill set out in cl 15 are much too narrow, and as outlined below, they omit important matters. Further, WSPs which are TAs will continue to be subject to the Local Government Act 2002 (**LGA**) and therefore the role and purpose of local government as stated in that Act, whereas other WSPs (WOs and any consumer trust providing water services) will not be. This creates a perverse distinction on this fundamental matter between WSPs which are TAs, and those which are WOs.

The statutory objectives of WSPs are fundamentally important, setting boundaries around the scope of the WSPs' operations and the matters which will be legally relevant to any actions which they take when providing water services. Statutory objectives are important for New Zealand as a whole, because they can help to ensure that all WSPs regardless of location achieve matters that are important in all communities, and act as a safeguard against TAs not providing for such matters either directly as WSPs, or as shareholders setting the direction for a WO that they have established. Broader objectives, that are also stronger because they "must" be complied with rather than being merely aspirational, are needed to ensure that "local water" is indeed "done well".

The Councils submit that the objectives of all WSPs should be the same and should cover the matters outlined below.

Supporting housing growth and urban development in their service area

The absence of this objective in the Bill is a significant omission, which stands to undermine the Government's primary focus on economic growth as stated in the Prime Minister's State of the Nation 2025 address (23 January 2025). It is also contrary to the Government's August 2024 policy announcements on water reform, and the Preliminary Arrangements Act. Under that Act (ss 8(1)(iv) and 15(1)(b)), a WSDP had to demonstrate the TA's commitment to supporting housing growth and urban development.

By contrast, under the Bill, WSPs *implementing* the WSDP have no statutory obligations in relation to housing growth and urban development. A TA providing water services in-house may decide that urban growth is simply not a priority, and not something it is prepared to raise revenue locally (through rates) to fund. Alternatively, where TAs have established a WO, it cannot be left to the shareholders to include support for housing growth and urban development within the expectations or priorities they set for a WO via the statement of expectations (**SOE**) under cls 187: put simply, the shareholders may decide not to do so. Again, what the TAs consider affordable (or unaffordable) in their community may be the overriding concern.

The objective of supporting housing growth and urban development must instead be universal and apply to all WSPs, rather than left as a matter to be raised by the shareholders of a WO through the SOE or comments on the draft water services strategy (**WSS**).

Safety should not be confined to drinking water

The reference in cl 15(1)(a)(i) to providing "safe drinking water to consumers" would not encompass the provision of safe wastewater or stormwater services to consumers. A failure to safely treat and dispose of wastewater can lead to severe adverse health effects in affected communities e.g. gastroenteritis, skin or respiratory infections; while the severe weather events of 2023 highlight the potentially life-threatening consequences of failing to properly operate and maintain urban stormwater networks. In short, all three water services (drinking water, wastewater and stormwater) need to be provided safely by WSPs, accepting that in the case of stormwater in particular, there may be matters outside the control of the WSP that influence whether that objective can be achieved.

It is anomalous that other objectives in cl 15 – for example the provision of a service which is reliable and of a quality that meets consumer expectations – apply to *all* water services, yet in the Bill as drafted, only the provision of drinking water needs to be "safe". Further, the current reference to providing "safe drinking water to consumers" does not meaningfully add to the obligation that a WSP will have already under s 21 of the Water Services Act 2021 (i.e. to ensure that the drinking water supplied by the supplier is safe).

Exhibiting a sense of social and environmental responsibility

The objectives of WOs should go beyond the interests of customers and shareholders. As significant public entities delivering water services on behalf of TAs, they should have commensurate obligations to the community more generally. Inexplicably, this responsibility which CCOs under the LGA have (see section 59) is not carried over to WOs under the Bill.

The Councils submit that the cl 15 objectives should include "to exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates." This objective will not dictate or constrain any behaviour by a WSP but will give balance to the other objectives in the Bill as currently drafted.

Relationships with iwi/Māori

It is insufficient for the Bill to leave a WSP's relationship with iwi/Māori to the particular WSP and its shareholders to determine. The Bill should include a universally applicable, high-level objective of performing its functions "in a way that partners and engages meaningfully with Māori in water services planning and implementation".

It is noted that even with the changes to the Taumata Arowai – the Water Services Regulator Act 2020 proposed by the Bill, the operating principles of the Water Services Authority (**WSA**) will still include "partnering and engaging early and meaningfully with Māori". It is consistent for a similar objective to apply to WSPs, who will be providing the water services regulated by the WSA. Again, leaving it to WSPs to decide how they will partner and engage with Māori creates a risk that this will be given insufficient emphasis, with iwi and hapu in some parts of New Zealand meaningfully engaged by their WSP, and others simply left out. While local variation in how to partner and engage early and meaningfully with Māori is both likely and appropriate, the Bill needs to set a minimum requirement or bottom line in this area.

Objectives are merely aspirational, and should become requirements

The Bill (cl 15) includes objectives of a WSP, but no requirements or principles as such. The objectives are aspirational and operate at a high level, whereas requirements or principles (appropriately qualified) would apply at the level of specific WSP decision-making. Under the current drafting, there is no requirement for a WSP to act in accordance with the objectives set out in cl 15 – unlike, for example, s57 of the Local Government (Auckland Council) Act 2009 which states that an Auckland water organisation (i.e. Auckland Council or Watercare) "must" do certain things and "is required" not to pay a dividend. Similarly, s60 of the LGA says that all decisions relating to the operation of a CCO "must be made" under the authority of its board and "in accordance with" its statement of intent and constitution.

The Select Committee is urged to recast the objectives in cl 15 (including the additional matters noted above) as obligations or requirements. This approach would also reduce the level of direction that shareholders need to set through the SOE and WSS (see next point).

2. **The Bill gives TA shareholders extensive controls over WOs, which conflicts with the rationale for establishing a WO and blurs accountability to communities**

Under the Bill, a significant level of control is given to a WO's shareholders. Combined with the extent of legislative compliance necessary, this may compromise the WO's ability to act successfully, and on a sound commercial basis. It also appears at odds with the Preliminary Arrangements Act and the policy positions expressed in LWDW.

The Preliminary Arrangements Act provides for communities to choose their preferred water services delivery option. This satisfies the first objective of LWDW. The process is well in train. Communities are presented with (broadly speaking) two options, with distinct and fundamental differences between them: continuing TA provision of water services; or provision by a "water services CCO", as defined in the Preliminary Arrangements Act.

The concept of a CCO is well understood: a stand-alone company separate to the TA, subject to limited shareholder oversight through high-level strategy documents but otherwise free to get on with its business in a commercial way, guided by competency-based board of directors. Primary accountability for the performance (or non-performance) of the CCO's activities rests with the CCO's board.

The Bill changes this model. The water services CCO option put forward as one of the service delivery options available under the Preliminary Arrangements Act is significantly different to a WO subject to the Bill. The distinction between in-house and CCO (WO) delivery is now unclear – and the differences between these two service delivery options are significantly less than established through the Government's policy announcements from August 2024.

Further, the level of control TA shareholders can exercise over the priorities and activities of the WO will in practice allow TA shareholders and the WO each to "point the finger" at the other, if the WO fails to comply with economic, consumer protection or environmental regulation, or there is low customer satisfaction with the WO's services.

When a WO is already subject to environmental and economic regulation designed to protect the interests of consumers, TA shareholders setting substantive expectations of the WO and

setting its strategic priorities for WO through the SOE (see cl 187) may affect the ability to attract competent and experienced professional directors to the WO's board.

3. **The Bill needs to define the relationships all WSPs, including WOs, are expected to have with iwi/Māori, and refer to the principles of Te Tiriti and Te Mana o te Wai**

The Bill needs much greater clarity on the role of, and relationship WSPs must have with, iwi/Māori when providing water services, and recognise that Iwi will be key stakeholders in water service planning and decision-making. This includes under existing Treaty settlement agreements and environmental co-management frameworks that already provide a model for collaborative approaches to freshwater governance.

The rationale for the Bill's minimalist approach to issues affecting Māori is that it should be up to local councils and iwi/Māori to determine how the relationships and partnerships with Māori work in practice, rather than having a "centrally prescribed model" in legislation. This is on the basis that councils will continue to be responsible for water delivery including existing obligations in the LGA setting out how iwi/ Māori interests will be considered as part of decision-making.[1] The Briefing Paper notes the Cabinet decision that existing council or CCO obligations relating to iwi/Māori interests under the LGA will continue to apply irrespective of service delivery model.

The Bill does not achieve this aim. It fails to take into account that if the WSP is a WO, then *none* of the LGA provisions relating to council decision-making affecting iwi/Māori interests will apply.[2] Contrary to the Briefing Paper, the Bill itself says that a transfer agreement transfers responsibility to the WO (cl 9(1)(b)), but more practically once such a transfer has occurred, the TA will no longer be making decisions about water services, and therefore the TA's own obligations to Māori will not be engaged.

This is an example of a perverse difference that the Bill creates between WSPs which are TAs, and those which are WOs.

Clause 41 should require a WSP to establish and maintain opportunities for Māori to contribute to the WSP's decision-making processes. WSPs that are territorial authorities already have this obligation under s81 of the LGA: the effect of cl 41 as amended would be to place WOs under the same obligation. It is anomalous that only some WSPs (ie TAs, or a regional council that provides water services) should be required establish and maintain opportunities for Māori to contribute to the WSP's decision-making processes.

Clause 41 as currently worded is also misdirected in its focus. The obligation it imposes on a WSP is to "act in a manner that is consistent with Treaty settlement obligations when performing and exercising functions, powers and duties under this Act". If obligations are already imposed on a WSP under Treaty settlements (which have their own legislation), then cl 41 is not required. On the other hand, obligations imposed on other parties (such as the Crown) under Treaty settlements will not generally be relevant to WSPs. Further, in some parts of the country Treaty settlements have not yet been reached: in those areas, cl 41 (because it relates to "Treaty settlement obligations" as defined in that clause) would impose no obligations on WSPs in terms of how they engage with or otherwise interact with iwi and hapu. A more appropriate direction

1 Briefing to the Minister of Local Government dated 3 October 2024 (**Briefing Paper**).

2 Section 60A, which also applies to CCOs, will apply. However, this is the only provision in Part 5 of the LGA imposing obligations on CCOs in relation to iwi/Māori interests, noting that a statement of expectations under s64B *may* address this matter.

under cl 41 would be to take appropriate account of the principles of the Treaty of Waitangi/ Te Tiriti o Waitangi (rather than "Treaty settlement obligations" as defined).

In addition, cl 41 should require a WSP to give effect to Te Mana o te Wai when performing its functions, power, or duties under the Act. This would be consistent with s14(2) of the Water Services Act 2021, which states that "when exercising or performing a function, power, or duty under this Act, a person must give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to the function, power, or duty". Importantly, however, it would go further insofar as the Water Services Act 2021 relates primarily to the obligations of *drinking water* suppliers, whereas WSPs under the Bill are also responsible for wastewater and stormwater services.

The Bill also fails to ensure that the mix of skills, knowledge, and experience required on the Board of a WO (see cl 40) includes knowledge and understanding of Te Mana o te Wai outcomes and Te Tiriti o Waitangi. Some TA shareholders of a WO may decide that these matters are important when appointing directors to the WO Board, while others may not. This approach risks these vital competencies not being present on the boards of some of New Zealand's new WOs. Amendments to cl 40 are required to make knowledge and understanding of Te Mana o te Wai outcomes and Te Tiriti o Waitangi a mandatory competency that must be held by at least some directors on a WO's board.

4. **The Bill should strengthen its current protections against future privatisation of water services**

A key aspect of the Government's August 2024 policy announcements was that the future Local Government (Water Services) Bill would contain protections against the privatisation of water services. The only provision in the Bill that reflects this policy position is cl 37(2), which states:

> (2) A water organisation must be wholly owned by—
> (a) 1 or more local authorities; or
> (b) 1 or more local authorities and the trustees of 1 or more consumer trusts; or
> (c) the trustees of 1 or more consumer trusts.

However, a TA may apply to the Secretary for Local Government under cl 55(5) for an exemption from this requirement, if it "intends to establish a water organisation that is owned by shareholders of a co-operative company". The ability to obtain an exemption opens to the door to the possible privatisation of water services, by allowing shares in a WO to be owned by an entity other than a TA or consumer trust. This is contrary to the policy direction signalled under LWDW.

The Councils therefore urge that:

- Clause 37(2) be supplemented by a new subclause (2A) which states that, for the avoidance of doubt, a local authority or trustee of a consumer trust is prohibited from transferring its shareholding in a WO to anyone other than another local authority or trustee of a consumer trust that owns or co-own a WO; and

- Clause 55(5), which provides for an exemption from the requirement of local authority or consumer trust ownership of a WO, be deleted.

5. **The Bill should be simplified to reduce unnecessary complexity and compliance costs for WSPs, and WOs in particular**

The Bill is extremely detailed and complex. This is contrary to the overriding purpose of the Bill (cl 3) which is to "establish a framework for local government to provide water services in a flexible, cost-effective, financially sustainable, and accountable manner". Flexibility and cost effectiveness in the delivery of water services are undermined by several aspects of the Bill.

For many issues it should be possible for WOs to be governed by the existing CCO provisions in the LGA, supplemented by minimal bespoke provisions that are necessary because of the special circumstances of WOs, as well as the general law which applies to all companies (including other utility providers).

By way of illustration, at present only 22 sections in the Local Government (Auckland Council) Act 2009, as well as the general CCO provisions in Part 5 of the LGA, apply to Watercare. There is no evidence that Watercare has been unable to effectively carry out its water services functions under its statutory regime. Watercare funds its operations from customer charges that have no statutory basis: the charges paid by its customers are purely contractual. These charges include both fixed and volumetric charges for the provision of water and wastewater services, and infrastructure growth charges in lieu of development contributions charged elsewhere in New Zealand by TAs under the LGA to fund capital expenditure on growth-related infrastructure. By contrast, the Bill contains detailed provisions relating to charges and development contributions, notwithstanding that as a legal person WOs would (like Watercare) be free to set charges of all types as a matter of contract.

For TAs which are WSPs, it should be possible to largely rely on existing LGA provisions which govern all activities of TAs rather than to create a parallel regime which increases the complexity of the TA's operations and compliance obligations. In many cases, the relationship between the LGA regime and the Bill's provision covering the same matter is unclear. For example, the Bill does not state that its provisions in relation to works on private land (see cl 115 to 120) apply in place of their LGA equivalents. That being so, it is unclear whether a TA WSP could simply bypass the regime in cls 116 to 120 of the Bill, and rely instead on the more favourable LGA regime in s181 and Schedule 12 of that Act (noting that a WO would not have this option).

Another example of unnecessary complexity relates to drinking water catchment plans (cl 143). It is not apparent why a TA should be responsible for preparing a drinking water catchment plan where a WO is providing drinking water services. A TA that has transferred its water services functions to a WO is likely to lack the capability to produce such a plan. While a TA can delegate the preparation of a drinking water catchment plan to the WO under cl 143(2), it is not required to do so. The responsibility to prepare the plan should automatically rest with the relevant WSP. Further, the drinking water catchment plan largely duplicates existing requirements under s 43 of the Water Services Act 2021 to prepare a source water management plan.

6. **The Bill should not require the Councils to enter into a transfer agreement with a WO within 6 months**

The definition of water organisation in cl 4 of the Bill includes a CCO that "immediately before the commencement of this Act, was providing water services", and "intends to continue to provide water services on and after the commencement date". On that basis, WWL is likely to be a WO once the Bill comes into force, even if in due course it is dis-established and a new WO

owned by the Councils is established in its place to provide water services in the relevant service area.

DIA's factsheet on the Bill states:

Council-controlled organisations (such as Watercare) that currently provide water services – and will continue to do so after the Bill is enacted – will automatically become water organisations, upon enactment. This means they will be subject to the new Act, and the responsibilities that apply to other water service providers.

Where a CCO becomes a water organisation and does not already meet the statutory requirements that apply to water organisations, it has six months following enactment to make the changes needed (or for territorial authority shareholders to obtain an exemption, if relevant). Similarly, a territorial authority that is a shareholder in a CCO that becomes a water organisation has six months in which to provide a transfer agreement, to formalise the responsibilities and other matters held by the organisation and the authority.

While WWL may be able to meet the statutory requirements that apply to WOs, it is not clear where/how the Bill requires a transfer agreement to be entered into between the Councils and WWL (or a new WO) within 6 months of the Bill coming into force. It would not be possible for the Councils to meet this timeframe. Urgent clarification has been sought from DIA about the basis for this statement in its factsheet.

7. **The Bill's provisions regarding works on private land will hinder infrastructure provision**

The regime proposed in the Bill for entry into private land (see cl 116 to 120) does not sensibly balance the rights and interests of the landowner with those of the WO and will be unworkable. If enacted, it will be a significant impediment to a WO's day-to-day operations, and make the delivery of water services infrastructure by WOs slower and more expensive than under the current LGA regime. As these costs and delays will ultimately be borne by the WO's customers (households and businesses), it will make water services less affordable and hinder economic growth.

The Bill contains no general power for a WO to enter land, even for non-intrusive actions. In every case the WO must go through a highly prescriptive notice procedure which, if consent is not given or unreasonable conditions are imposed, or agreement cannot be reached, escalates to the District Court. In the meantime, the land cannot be entered even, say, to carry out a visual inspection.

By contrast, currently under the LGA the consent process is only needed when physical works on the land are proposed. The LGA gives a general power of entry onto land (but not a dwellinghouse) in s 171 "for the purpose of doing anything that the local authority is empowered to do under this Act or any other Act". The Bill needs an equivalent provision: cl 116 and 117 processes are limited to entry for the purposes of carrying out physical works on the land.

Currently under the LGA, a landowner who does not consent to a local authority undertaking work on their private land that is necessary for water supply, wastewater or stormwater purposes has a right of objection to the TA, and after that a right of appeal to the District Court, whose decision is final: LGA s181 and Schedule 12. The current process in the LGA should also apply where a landowner does not give consent or imposes unacceptable conditions. It puts the

onus on the landowner, rather than the TA, to take the matter to the District Court. In practice this can act to filter out unmeritorious objections.

Under cl 120(5), on appeal to the District Court, the Court may authorise a WSP to carry out construction works or infrastructure placement only if satisfied that "no practical alternative exists". This sets the bar too high – notably higher than other equivalent requirements such as to give adequate consideration of alternatives – see s 204 of the now repealed Water Services Entities Act 2022, or s 171 of the Resource Management Act 1991. For example, there may be more than one route that a water or wastewater pipeline can take (i.e. a practical alternative *does* exist): however, every route involves private land, or only one of the routes allows conveyance entirely by gravity whereas the alternative routes require water or wastewater to be pumped (which is both more expensive and less resilient than using gravity). The test being set in this way under cl 120 is likely to prevent WSPs from being able to provide infrastructure on private land due to the inability to meet the "no practical alternative" requirement.

In general, the powers of entry provisions in the Bill are overcomplicated and in places confusing. It is unclear why the more straightforward regime under the LGA, which staff involved in water services are already familiar with, cannot be used rather than creating a more complex and less workable regime in the Bill.

Note regarding Greater Wellington's position on two areas

While Greater Wellington supports this joint submission, it will also provide its own submission to elaborate on two critical areas: the impact of water services organisations on te taiao / the natural environment and the positioning in relation to mana whenua partnerships. Greater Wellington will take a stronger position than that agreed by the joint councils. Greater Wellington will also submit in relation to how existing legislation relating to its powers and functions for water supply need to be addressed.

Conclusion

The Councils and our Iwi Partners are committed to a sustainable financial model for water services that can deliver network resilience, enable growth, improve harbour and catchment health, and provide excellent, affordable services to our community.

We want to work with Government to ensure that the new water services regime provides the right mechanisms for success. For these outcomes to be achieved, further consideration of the Bill as drafted is required, supported by a commitment to work with local government through the implementation process.

We would like to speak to the Finance and Expenditure Select Committee in support of our submission.

Ngā mihi

Kerry Prendergast

Dame Kerry Prendergast
Chair, Advisory Oversight Group (AOG)
Wellington metro water services delivery plan

For and on behalf of:

Council / organisation	**AOG Representative**
Chair	Dame Kerry Prendergast
Greater Wellington Regional Council	Cr Ros Connolly
Upper Hutt City Council	Mayor Wayne Guppy
Hutt City Council	Mayor Campbell Barry
Porirua City Council	Mayor Anita Baker
Wellington City Council	Mayor Tory Whanau
Te Rūnanga o Ngāti Toa	Helmut Modlik, Tumu Whakarae - Chief Executive Officer
Taranaki Whānui ki Te Upoko o Te Ika / Port Nicholson Block Settlement Trust	Kara Puketapu-DenticeTumu Whakarae | Chief Executive Officer

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Part 2 – detailed comments on specific clauses of the Bill

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
Part 1 – Preliminary provisions		
3.	The opening words in the primary purpose in cl 3(a) focus on the positive aspects of the proposed framework without any balance reflecting potential limits on achieving those matters. This would give rise to a one-sided assessment of whether any proposed action is consistent with the purposes of the Bill. Compare cl 3 with the obligations on Watercare under s 57(1)(a) Local Government (Auckland Council) Act 2009, which qualifies the positive obligation to provide services at minimum cost with the words "consistent with the effective conduct of its undertakings and the maintenance of the long-term integrity of its assets". That section also refers to "customers", who are not mentioned in cl 3. The purpose should include creating a framework that provides for customer-focused water services, in which case the reference to accountability can be removed. Nor is environmental sustainability mentioned, only financial sustainability. "Flexibility" relates more appropriately to the framework being established, not the way water services are provided.	Appropriately qualify purpose in cl 3(a) to take into account real life limits on achieving the purposes, and wider matters. Amend clause 3 as follows: (a) to establish a <u>flexible</u> framework for local government to provide water services in a ~~flexible~~ <u>customer-focused</u>, cost-effective, financially <u>and environmentally</u> sustainable~~,~~ ~~and accountable~~ manner
4.	<u>Definition of "overland flowpath"</u> The definition in the Bill is "any flow path taken by stormwater on the surface of land". This is so broad as to be impracticable and uncertain. The definition of overland flow path in the Auckland Council Unitary Plan, widely used and accepted by local government organisations, would provide certainty as to what is included in these paths.	The definition should be amended to provide that "overland flow path" means "low point in terrain, excluding a permanent watercourse or intermittent river or stream, where surface runoff will flow, with an upstream contributing catchment exceeding 4,000m².".

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	Definition of 'stormwater network' Subcl (b) of the definition of "stormwater network" includes an overland flow path, green water services infrastructure, and watercourses that are part of, or related to, the infrastructure referred to in subcl (a). This particular wording makes it unclear whether an overland flowpath on private land is to be regarded as part of the stormwater network. It is unlikely to be "part of" the infrastructure operated by the WSP referred to in subcl (a), but arguably it is "related to" that infrastructure if stormwater runs across an overland flowpath into a culvert or drain that is owned by the WSP. The importance of this is that a stormwater risk management plan under cl 167(1) must contain a map of the stormwater network (which on the interpretation above would include all overland flowpaths that "connect" in some way to a WSP drain). Clause 167(1) also includes a separate requirement to identify all overland flow paths and watercourses "that receive stormwater from, or take stormwater to, other infrastructure in the network". Reading clause 170 relating to stormwater network bylaws, it seems apparent that the intention is for an overland flowpath on private land to be part of the stormwater network. Clause 164 also states that a WSP's responsibility for management of the stormwater network "extends to overland flow paths and watercourses that are a part of (sic) network". The solution to resolve the uncertainty is to remove the link in subcl (b) to subcl (a), so that an overland flow path, green water services infrastructure, and watercourses are treated as part of the stormwater network regardless of whether or not they are "part of" or "related to" the physical infrastructure owned or operated by the WSP; or alternatively to use the more precise wording found in cl 167(1)(f). Definition of 'stormwater service'	Delete from subcl (b) of the definition the words "includes any of the following that is part of, or related to, the infrastructure referred to in paragraph (a)". Alternatively, replace these words with "any of the following that that receives stormwater from, or take stormwater to, other infrastructure in the network" (the form of words used in cl 167(1)(f)). An alternative is to use the following definition taken from the Auckland Council Stormwater Bylaw 2015: **stormwater network** means a set of facilities and devices, either natural or built components, which are used to convey run off of stormwater from land, reduce the risk of flooding, and to improve water quality, and includes: (a) open drains and watercourses, overland flow paths, inlet structures, pipes and other conduits, manholes, chambers, traps, outlet structures, pumping stations, treatment structures and devices; (b) the public stormwater network; and (c) private stormwater systems.

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	The definition of "stormwater service" in subcl (b) expressly "does not include a service relating to a transport corridor". This exclusion is presumably designed to prevent roads and other transport corridors being treated as part of the stormwater network notwithstanding that they serve stormwater functions. But roads are often some of the most significant overland flow paths in any district, and in a functional sense are part of the stormwater network. The meaning of the exclusion is unclear: is only stormwater infrastructure (such as a drain) located *within* a road or other transport corridor excluded, or would the exclusion also cover say a stormwater pond that was located adjacent to the corridor but still providing a service "relating" to the corridor?	Clarify definition of "stormwater service" to address the point raised.
	<u>Definition of 'wastewater services'</u> Subcl (b)(i) of the definition of "wastewater services" implies that the boundary of the service provision and therefore the wastewater network (defined by reference to the wastewater service) is the customer's property boundary. However, the point of supply for wastewater may be inside or outside that boundary. It is suggested that, as with "point of supply" for water in the Water Services Act 2021 (**WSA**), the wastewater services are defined as being provided to the point where the WSP's network connects to the customer's network, but without specifying what that point is. This leaves flexibility to determine that point in any particular situation. Each WSP could publish information as to the point of supply in its supply area in various scenarios. The definition is also circular because "wastewater services" is defined by reference to the "wastewater network" which in turn is defined by reference to the "wastewater service".	Define wastewater services as being provided to the point where the WSP's network connects to the customer's network, but without specifying what the point is.
Part 2 – Structural arrangements for providing water services		

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
Subpart 1 – Responsibility for providing water services *Territorial authority's responsibility*		
8 and 9	The Bill needs greater clarity about what a TA's residual responsibilities, if any, are once it enters into a transfer agreement. Cl 8(1) says the TA is responsible for "ensuring" that water services are provided in its district. Cl 8(2) says it may transfer responsibility for "providing" water services to a WO. In combination this suggests the TA may retain some responsibility for ensuring the services are (properly) provided by the transferee. Clause 9(1) is to similar effect because it says the TA must ensure that water services are provided in its district in one of the listed ways, including through a transfer agreement. Arguably, the requirement to ensure the water services are provided (which may mean properly provided) remains with the TA even if there is a transfer agreement. The purpose in cl 3(a)(i) refers to TAs' responsibility for the provision of water services, and the "different methods by which they can structure service provision arrangements", implicitly to satisfy that responsibility i.e. not necessarily to remove the responsibility entirely. The fact the WO becomes the WSP (cl 12(2)) is not necessarily inconsistent with this. However, cl 9(3) an (4) imply, without stating directly, that where there has been a transfer agreement the TA is no longer responsible for "ensuring the provision" of water services. The precise effect of a transfer of responsibility may influence the relationship between a TA and a WO transferee and the TA's ongoing obligations following transfer.	Provide a clear statement of a TA's responsibilities once it has entered into a transfer agreement i.e. that it no longer has responsibility for providing water services itself. Expressly state that the obligations in cl (4) do not apply where there is a transfer agreement under cl 9(1)(b), rather than leaving that implicit (because transfer agreements are not referred to in cl 9(3)). The TA must have a responsibility to select and implement a delivery model. But where it does that through entering into a transfer agreement, the TA's responsibilities should be simply those of a contracting party (i.e. to enforce the contract at its discretion), together with the general rights and obligations as the shareholder of a CCO under the Bill.

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	The position should be clarified by stating that once a TA has entered into a transfer agreement it no longer has responsibility for providing water services itself, or ensuring the WO transferee provides those water services. The obligations on the WO to do so could however (and probably would) be a term in the transfer agreement.	
8 and 9 and the Bill more generally	The Bill is silent on its overall relationship with the LGA. This produces uncertainty and anomalies. For example, a TA which decides to provide water services directly will still be subject to the LGA including the purpose, role and principles in Part 2 of the LGA, and, except where there is an exception in the Bill, the decision-making requirements in Part 6. The same will presumably apply where a TA enters into a contract or arrangement (other than a transfer agreement) where it legally remains the WSP (refer cl 9(4)). However, WOs will not be subject to the LGA. For TAs who will continue to be subject to the LGA when providing water services, there is significant scope for uncertainty as to what legislation will apply in particular scenarios.	Make the Bill a code (to the exclusion of the LGA) in relation to the provision of water services by TAs, perhaps with specified exceptions (for example, s57 re appointment of directors, or s74 re LGOIMA).
9(1)(e)	This paragraph says one of the ways in which a TA must ensure water services are provided in its district is by "becoming a shareholder in a water organisation established by another territorial authority". This is inaccurate as simply becoming a shareholder does not ensure water services are provided – obviously more is needed than that. Further, this paragraph adds nothing to paragraph (b) which says that the obligation to ensure the provision of water services may be satisfied by a transfer agreement.	Delete cl 9(1)(e).

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	Becoming a shareholder in a WO established by another TA is not relevantly different from the TA establishing (and becoming a shareholder in) its own WO. In both cases the services are provided by the WO through a transfer agreement.	
Transfer of responsibilities to a water organisation		
11 and Schedule 2 (contents of transfer agreements)	Section 11(1) says that the section "applies to a territorial authority that intends to transfer responsibility for providing water services to a water organisation". It requires there to be a transfer agreement between the TA and the WO. The section does not provide for the possibility of a transfer agreement between a CCO that provides water services on the date the section comes into force (such as Wellington Water Ltd) and a new WO. There will be existing assets and liabilities of the CCO that are appropriately the subject of a such transfer agreement. There does not appear to be any way for the organisation that is being transferred the responsibilities to confirm that it accepts them. They just need to be transparent to the water org Board (cl12(1)(a)). The only exception seems to be liabilities, where clause 12(3) says that Schedule 9 of the LGA 2002 applies and that Schedule says that a territorial authority can only transfer liabilities with the agreement of the CCO. The risk is that the new organisation is given responsibilities it is unable to fulfil or that carry high risks. Clause 13 does let the new organisation have the right to agree to any changes. There should be some wording around disputes, or what happens if either party does not fulfil its side of the agreement. For example, dispute resolution procedures could be mandatory content for a transfer agreement under Schedule 2. Clause 11(2) could be read as implying there is only one transfer agreement possible under clause 11. The Councils anticipate that, given the scale of the re-	Add a new subclause (8) as follows: (8) Where a council-controlled organisation established before the commencement of this section is responsible for providing water services, and the shareholders of that organisation intend to transfer responsibility for providing water services to a new water organisation: (a) the council-controlled organisation and water organisation must enter into a transfer agreement; and (b) subsections (2), (4) and Schedule 2 apply to the council-controlled organisation as if all references to a territorial authority were references to a council-controlled organisation. Add new clause to Schedule 2 to make dispute resolution procedures mandatory content for a transfer agreement.

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	organisation of water services, they may require more than one transfer agreement to transfer specified responsibilities to a new WO, outside the circumstances of clause 13 in which a new transfer agreement is required. We recommend a subclause 11(8) to say that nothing in clause 11(2) – which says that a TA must enter into a transfer agreement with a WO – prevents the TA and WO entering into more than one transfer agreement under this clause.	Insert a new clause 11(9) stating that nothing in clause 11(2) prevents the TA and WO entering into more than one transfer agreement under this clause.
11(3)	The distinction drawn here and elsewhere in the Bill (see comment on cl 9(1) above)) between WOs the TA has established and those in which it is a shareholder is unnecessary and unduly complicating. The relevant prerequisite in both cases is that the TA is a shareholder in the WO. The distinction *is* relevant in the context of the mechanisms by which the WO can be established or the TA can become a shareholder, but not once that WO is established or the TA's relationship with the WO from that point on.	Amend cl 11(3) by deleting paragraph (a) i.e. to simply provide that a TA may enter into a transfer agreement with a WO in which it is a shareholder.
11(5)	This subclause prohibits one territorial authority entering into a transfer agreement unless "all of them do". This fails to recognise that in practice, the different TAs establishing (or that are shareholders in) a WO will enter into transfer agreements sequentially, rather than all at the same time. As drafted, Council A (which decides first) will be precluded from entering into a transfer agreement because Councils B and C have not already done so.	Reword cl 11(5) to state that if more than one territorial authority is a shareholder in a WO, a transfer agreement entered into by one territorial authority has no effect until all TAs that are shareholders in the organisation have entered into a transfer agreement. Alternatively provide that one TA may not enter into the transfer agreement until all of them have *resolved* to do so. Once resolutions have been passed there is very high degree of certainty that the agreements will be entered into.
12	Clause 12 sets out the purpose and effect of a transfer agreement, which must contain the matters in Schedule 2 (cl 11(6). Those matters include (cl 3(g) of Schedule 2) contracts, including service agreements with any other person.	Include in cl 12 a provision equivalent to s 35 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 stating that relevant

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	There is nothing in the Bill which says that such transferred contracts etc will automatically apply to the WO in the same way as they did to the TA. Indeed, Schedule 9 of the LGA, which applies (see cl 12(3)), says that liabilities are not transferred except with the agreement of the other affected parties. In practice this means that contracts will not transfer without third party agreement because it is not feasible to transfer the benefit but not the liabilities associated with a contract. This will create difficulties, as the TA will remain contractually responsible for performance but will no longer have legal responsibility for the provision of the water services. The Bill must include a deeming provision which says any transferred contracts etc have the automatic effect of substituting the WO for the TA in that contract. This was the approach successfully used on Auckland reorganisation in 2009, which also involved the transfer of assets and functions to CCOs: see s 35 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009. See also the comment on cl 39 relating to the identification of the contracts etc which are transferred.	contracts, agreements and other arrangements of a TA or council-controlled organisation that, on the date the section comes into force, provides water services in the service area of a WO become contracts, agreements and arrangements of the WO. Exclude the application of cl 12(3) of Schedule 9 of the LGA.
13(1)	The clause covers the circumstances and process where a new transfer agreement is entered into. Clause 13(1) is limited to a transfer agreement with a WO which the TA *has established* i.e. it does not include the alternative scenario of a TA acquiring shares in an existing WO. This is another example of the unnecessary distinction referred to in the comment under cl 11(3). It is unclear why the situations in cl 13(1)(c) and (d) (ceasing to be a shareholder and disestablishing the WO) are qualified as "if applicable". Each of the options only applies if the relevant decision has been made. The language of a "further" WO in cl 13(1)(e) is odd.	Amend cl 13(1) to delete the reference to establishment and provide that it applies where a TA has entered into a transfer agreement with a WO. Delete "(if applicable)" in cls 13(1)(c) and (d). Amend "further" to "different" in cl 13(1)(e).

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13(3)	This subclause requires a territorial authority to obtain the agreement of non-territorial authority shareholders before entering into certain types of agreement (in subcl (1)(c) and (d)). However, cl 13(2)(b)(ii) already requires there to be agreement with all shareholders on "all relevant matters". Clause 13(3) therefore duplicates 13(2)(b)(ii) and introduces uncertainty about the scope of the "relevant matters" in cl 13(2). As a matter of principle, it should be a requirement that all shareholders in the WO consent to any of the matters in cl 13(1) (and not just those in cl 13(1)(c) and (d)), as they may all significantly affect the WO and its viability. Clause 13(3) is also premised on cl 13(1) applying only when the WO has been established by the TA (see previous comment).	Delete cl 13(3). If cl 13(3) remains in some form, amend to refer simply to "other shareholders in a water organisation", rather than "shareholders in a water organisation other than the territorial that established it".
Water service providers		
15	The clause sets out the objectives of WSPs. However, there is no corresponding obligation on the WSP to meet those objectives, with or without qualifications. This can be compared the obligations on Watercare in s 57 of LGACA, which uses the term "must". It can also be compared to: • cl 16, which states that a WSP "must act in accordance with the following financial principles"; • cl 186, which states that a WO must "give effect to a statement of expectations provided by the shareholders of the water organisation". Accordingly, the cl 15 objectives are subordinated to both the cl 16 principles and shareholder expectations in the SOE. The objectives in cl 15 will have little impact on WSP decision-making without obligations on the WSPs which are linked to the objectives.	Amend cl 15(1) as follows: (1) ~~The objectives of a~~ A water service provider ~~are :~~ must exercise its functions, powers and duties in accordance with the following objectives:

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15(1)	The objectives of water services set out in this clause are framed too narrowly. Clause 12 may be compared with s 15 of the now repealed Water Services Entities Act 2012 (**WSEA**), which included objectives to "protect and promote public health", "protect and promote the environment", and to "support and enable planning processes, growth, and housing and urban development". In particular: • The reference in cl 15(1)(a)(i) to providing "safe drinking water to consumers" would not encompass the provision of safe wastewater or stormwater services to consumers or protecting people from the risks of flooding through stormwater. It is anomalous that other objectives - for example the provision of a service which is reliable and of a quality that meets consumer expectations - apply to all water services, yet only the provision of *drinking water* needs to be "safe". Further, the current reference to providing to providing "safe drinking water to consumers" does not meaningfully add to the obligation that a WSP will have already under s 21 of the Water Services Act 2021, whereas a wider reference to providing "safe water services" would extend that obligation. • The objective in cl 15(1)(a)(ii) of providing water services that "do not have adverse effects on the environment" is unrealistic, because the provision of water services (for example, the abstraction of source water from rivers or aquifers) will always have *some* adverse environmental effects. A more realistic objective would be to provide water services in a way that "minimises (so far as practicable)" or "aims to minimise" adverse effects on the environment. Note that Greater Wellington supports the government's approach to achieve no adverse effects, as outlined in its own submission.	Amend cl 15(1) to include the identified omissions within the statutory objectives of WOs, in particular: • In cl 15(1)(a)(i), replace the words "drinking water" with "water services"; • In cl 15(1)(a)(ii) replace the words "do not have" with "in a way that minimises (so far as practicable)"; • Add a new cl 15(1)(a)(vii) as follows: support the housing growth, urban development and economic development objectives of the territorial authorities in its service area; and • Add a new cl 15(1)(c)(iii) as follows: in a way that partners and engages meaningfully with Māori in water services planning and implementation • Add a new cl 15(1)(f) as follows: to exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates • Add a new definition in cl 15(2) as follows:

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	• There is no reference in cl 15 to providing water services in a way that supports housing growth and urban development, contrary to the government's August 2024 policy announcements. The water services delivery plan prepared under s 8 of the Local Government (Water Services Preliminary Arrangements) Act 2024 (**Preliminary Arrangements Act**) must demonstrate a commitment to deliver water services in a way the supports the TA's housing growth and urban development, and not carrying that aim through into the WSP's objectives in the Bill is a significant omission (the delivery plan will have no ongoing life once the delivery arrangements are established). It is insufficient to leave "supporting housing growth and urban development" as a matter that shareholders of a WO can raise through the SOE or in its comments on the draft WSS. • There is no reference in cl 15 to partnering and engaging meaningfully with Māori – compare this to the operating principle in s 14(g) of the now repealed WSEA. Legislative recognition be given to the role of iwi as key regional stakeholders in water service planning and implementation. • While some wording from s 59 of the LGA 2002 relating to objectives of CCOs has been carried over, there is no reference to exhibiting a "sense of social and environmental responsibility by having regard to the interests of the community in which it operates" (cf s 59(1)(c) of the LGA; nor is "good employer" (referred to in cl 15(1)(e)) defined, unlike in s59(2) of the LGA.	**good employer** has the same meaning as in clause 36 of Schedule 7 of the Local Government Act 2002.
16	The financial principles for water services providers currently only refer to revenue and expenses but there is nothing about paying off debt. Clause 16(1)(a) could be interpreted as saying you can only spend revenue directly on the services and not on debt repayments.	Amend cl 16(1)(a) as follows (a) the provider must spend the revenue it receives from providing water services on providing <u>or funding</u> water services

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
		(including expenditure on maintenance, improvements, and providing for growth):
17(1)	This subclause states that a WSP that provides water services in its service area must continue to provide water services "in accordance with this Act" and "maintain its capacity to meet its obligations under this Act". This wording does not (but should) recognise a TA's power to transfer its responsibility for providing water services to a WO under cl 11. Nor does cl 17 cover the reverse scenario of a WO ceasing to provide water services because the TA wishes to resume responsibility itself or wishes the services to be provided by a different WO. Clause 17 is based on s 130 of the LGA, but the exceptions to the s 130 obligations in ss 131 to 137 (for example, in relation to closing down small water services) are not carried over. There should be the ability to close down small water services if the WSP obtains a mandate to do so from the affected community as provided for under the current LGA provisions.	Amend cl 17(1) to explicitly recognise the possibility of transfer of responsibility either to or from a WO as exceptions. Add equivalent provisions to ss 131 to 134 of the LGA in relation to closing down small water services.
17(2)	Clause 17(2)(c) refers to an obligation to comply "with subsection (3)". There is no cl 17(3).	Delete cl 17(2)(c) or add the intended cl 17(3) (subject to what that clause says).
Limitations on transfer agreements, contracts, and joint arrangements		
18	It is suggested that any transfer of ownership by a WO, even within the limits of cl 18, should be subject to the consent of all shareholders. The effect of such a transfer may be to fundamentally change the basis upon which the WO was established and received the infrastructure. The relationship between cl 18(3) and the terms of a transfer agreement is also unclear e.g. even if the transfer agreement purported to prevent further transfer of ownership this may not prevail over cl 18 which arguably gives a WSP a statutory	Provide that cl 18(3), in the case of a WO, is subject to the consent of all of the shareholders and the provisions of any relevant transfer agreement.

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	right to transfer its ownership of water services infrastructure in certain circumstances.	
Water supply ensured if supplier facing significant problem, etc.		
20	It is unclear whether this applies to any drinking water supplier within area that a water services provider is responsible for.	Amend cl 20(1)(a) (i) as follows: (i) becomes aware that ~~a~~ <u>any</u> drinking water supplier <u>in its service area</u> is facing a significant problem or significant potential problem in relation to drinking water supply;
Decision making by territorial authorities		
25	The relationship between cls 25 to 30 and Part 3 of the Preliminary Arrangements Act is not clear. In particular, cl 25(7) refers to the possibility of "inconsistency arising between any of the requirements in sections 26 to 30" and corresponding alternative requirements in Part 3 of the Preliminary Arrangements Act. There would be no inconsistency if the provisions in cls 26 to 30 of the Bill "take over" on the Bill's enactment, with the equivalent Preliminary Arrangements Act provisions being repealed at the same time. Then, they would never overlap in time. However, this may create difficulties for TAs who may be part way through the process at the time the Bill is enacted. Accordingly, the better way to ensure that the Preliminary Arrangements Act regime and clauses 26-30 do not operate concurrently is to delay commencement of clauses 26 to 30 to a later date such as 1 January 2016, to allow completion of Preliminary Arrangements Act processes. An alternative which would avoid this problem would be for the Bill to be clear that the change proposals covered by cls 26 to 30 of the Bill are changes from the initial water services arrangement determined under the Preliminary Arrangements Act. This approach would not require the repeal of the Preliminary	Clarify in cl 25 that a "change proposal" does not include a decision under the Preliminary Arrangements Act to establish a WO or become a shareholder in a WO. Delete cl 25(7).

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	Arrangements Act provisions; they simply would not apply to the decisions under the Bill. The "in the event of inconsistency" cl 25(7) could then be removed.	
25 to 30	These clauses set out the procedural requirements when a TA is proposing to make certain changes to the provision of water services (a change proposal). As worded, the provisions are directed at the TA(s) who is/are proposing the change, however all affected TAs (if there are other shareholders as well) must comply with cls 26 to 30 (cl 25(4)). It is not clear how cls 26 to 30 apply to such other TAs or indeed what their relevant decision is. Presumably their decision (if they are not one of the proposers) is whether to consent to the change, but if so that should be made clear. Also, as the proposal whether to consent or not is different to the change proposal, there need to be bespoke process requirements – for example, cl 26 cannot apply to that TA.	Redraft or add to cls 25 to 30 to specifically cover the situation of a shareholder who is not making the change proposal, including specifying what decision that TA is making.
26	Self-evidently the existing approach cannot be "an option for achieving the end intended to be achieved by the change proposal". It would be better for this clause to impose an obligation to identify the objective to be achieved by a change proposal, and the extent to which that objective is achieved by the existing approach to provide water services, the change proposal, and one further reasonably practical option, if available.	Reword cl 26 accordingly.
27	Clause 27(1)(b) imposes a requirement to consult on an amended proposal, if consultation on a change proposal "results in significant amendments to the proposal". However, cl 27(3) sets out matters a territorial authority **must** have regard to when "deciding whether to undertake further consultation under subsection (1)(b)". This is internally inconsistent, if cl 27(1)(b) applies consultation is mandatory, not discretionary.	Amend clause 27(1)(b)(ii) as follows: if the consultation results in a significant amendment to the proposal, ~~must~~ may consult on the amended proposal;

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	We question whether further consultation should be mandatory under cl 27(1)(b) even if consultation results in a significant amendment to the change proposal. So long as that amendment is "within scope", ie a foreseeable outcome of the consultation and "on the table" from the community's perspective, additional consultation seems unnecessary, cumbersome and time-consuming. The matters a council must have regard to under cl 27(3) make more sense if additional consultation on an amendment to a proposal is discretionary, rather than mandatory.	
28	Clause 28(1) requires the information made publicly available during consultation to include the proposal, an explanation of the proposal and the reasons for the proposal (para a); and an assessment of the identified options including "the option that the territorial authority prefers, and why (para b)". This option is the proposal, and hence para b duplicates the requirements of para a.	Reword cl 28(1)(b) as follows: an assessment of the other options identified under section 26 and explanation of why these are not preferred;
32(1)	Clause 32(1)(e) lists as one of the ways in which a regional council may provide water services, becoming a shareholder in a water organisation established by a territorial authority in the region. As with our comment in respect of cl 9, water services are not provided by becoming a shareholder in a WO – becoming a shareholder in a WO is likely to be associated with the transfer of the regional council's responsibilities to the WO.	Delete cl 32(1)(e).
33(2)	This clause says that a TA may not transfer responsibility for the provision of water services to the regional council for the region in which the district is located. It is not clear why this is necessary (especially in a clause headed "Transfer of responsibilities **to** territorial authorities"), when transfer to a regional council is not one of the permitted options for a TA's water services provision under cl 9.	Delete cl 33(2).
Subpart 2 – Regions in which regional councils also provide water services		

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
33(2)	This clause says that a TA may not transfer responsibility for the provision of water services to the regional council for the region in which the district is located. It is not clear why this is necessary (especially in a clause headed "Transfer of responsibilities **to** territorial authorities"), when transfer to a regional council is not one of the permitted options for a TA's water services provision under cl 9.	Delete cl 33(2).
Subpart 3 – Water organisations *Water organisations: establishment and ownership*		
37(2)	This subclause is the Bill's only protection against the possible future privatisation of water services. It states that a water organisation must be wholly owned by one or more local authorities; one or more local authorities and the trustees of one or more consumer trusts; or the trustees of one or more consumer trusts. It needs to be reinforced by a provision that expressly prohibits a local authority or trustee of a consumer trust from transferring its shareholding to a different type of entity.	Insert a new subclause (2A) which states that, for the avoidance of doubt, a local authority or trustee of a consumer trust is prohibited from transferring its shareholding in a WO to anyone other than another local authority or trustee of a consumer trust that owns or co-own a WO.
37(3)	This clause states that shares in a WO do not provide the shareholder with any right, title, or interest in the assets or liabilities of the WO. However, shareholding may confer a contingent right or interest: one purpose of a shareholding, or a particular class of shares, may be to determine what the respective interests of the shareholders are in the event that the company is wound up and the assets need to be distributed to the shareholders. This type of shareholding would recognise the unequal contributions (in terms of assets) between different sized shareholders of a multi-council CCO.	Delete cl 37(3).
39	Clause 38, which prohibits a WO from doing anything other than providing water services in accordance with the Act, is stated in absolute terms – whereas in fact it is subject to the ministerial exemption power in cls 55 to 58 of the Bill.	Clause 38 should be explicitly subject to cls 55 to 58.
39(1)	This clause provides that a territorial authority proposing to establish or become a shareholder in a WO must "consider how any existing contracts, agreements or	Include in cl 12 a provision equivalent to s 35 of the Local Government (Tamaki Makaurau

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	arrangements between the territorial authority and a third party [which includes an iwi, hapū or other Māori organisation] that relate to providing water services will apply in relation the water organisation". Clause 3 of Schedule 3 (Content of transfer agreements) says that the transfer agreement must specify, amongst other things, "contracts, including service agreements between the territorial authority and any other person". This overlaps with cl 39 because deciding whether to include a contract in the transfer agreement will necessary involve considering how the contract will apply. However, cl 39 goes further by referring also to other arrangements. In our experience, it will not be possible to comprehensively identify and assess a TA's existing contracts, agreements and or arrangements relating to the provision of water services. Not all such agreements will be known or readily obtainable, and some will be multifaceted, covering water services and other matters. Inevitably, therefore, the contracts etc considered under cl 39 and identified in the transfer agreement will be incomplete. The Bill should address this by setting out the default position that *all* contracts, agreements or arrangements relating to the provision of the water services and infrastructure transferred to the WO automatically become contracts etc of that WO. It could also provide for exceptions, to cover specific known contracts etc which the TA wishes to retain or are inappropriate for transfer. This issue is linked to that in cl 12 discussed above, about the automatic substitution of the WO for the TA in the contracts etc with third parties which are transferred. The model in s 35 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 can also be used here. It is logical to address both matters together, in cl 12.	Reorganisation) Act 2009 stating that relevant contracts, agreements and other arrangements of a TA or council-controlled organisation that, on the date the section comes into force, provides water services in the service area of a WO become contracts, agreements and arrangements of the WO.

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Governance of water organisations: general		
40(2)	Clause 40(2) requires that "the directors of a water organisation must collectively have an appropriate mix of skills, knowledge, and experience in relation to providing water services." It but does not, does not specify that this mix of skills, knowledge, and experience must include knowledge of te mana o te wai outcomes or Te Tiriti o Waitangi. Clause 40(5) states that cl 40 applies "in addition to "the relevant provisions in Part 8 of the Companies Act 1993 and Part 5 of the LGA 2002". This wording does not identify what those "relevant provisions" are, thereby creating uncertainty. For example, it could just be s 57 of the LGA which relates specifically to the *appointment* of directors, or it could be other provisions in Part 5 that relate to directors (such as s58 relating to the role of directors). Section 57(3) of the LGA, in particular, states: When identifying the skills, knowledge, and experience required of directors of a council-controlled organisation, the local authority must consider whether knowledge of tikanga Māori may be relevant to the governance of that council-controlled organisation. Assuming this section is made relevant via clause 40(5), it only requires *consideration* of whether knowledge of tikanga Māori may be relevant to the governance of that council-controlled organisation. It does not make knowledge of tikanga Māori, let alone te mana o te wai outcomes or Te Tiriti o Waitangi, a mandatory competency on the WO board.	Include a requirement that the directors have knowledge of te mana o te wai outcomes and obligations under Te Tiriti o Waitangi. This could be achieved by amending clause 40(2) as follows: (2) The directors of a water organisation must collectively have an appropriate mix of skills, knowledge, and experience in relation to providing water services, <u>including Te Mana o te Wai outcomes and the Treaty of Waitangi/Te Tiriti o Waitangi</u>. Amend cl 40(5) to specify which provisions in the Companies Act 1993 and LGA 2002 apply to the appointment of directors. These provisions should expressly include s57(3) of the LGA 2002.
41(1)	This clause imposes a positive obligation on a WSP to "act in a manner that is consistent with Treaty settlement obligations when performing and exercising	Clause requires redrafting. Possible options are set out under "issue/comment". These include replacing clause 41 as currently drafted with the following:

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	functions, powers and duties under this act". A Treaty settlement obligation may be an obligation in a Treaty settlement Act or a Treaty settlement deed. Clause 41 is in a part of the Bill dealing with the governance of WOs, and so it is unclear why the clause is drafted as applying to the wider category of WSPs (which will include TAs). Clause 40 should be amended accordingly, or the clause relocated. WOs (as opposed to the Crown) will not have obligations under either a Treaty settlement Act or a Treaty settlement deed, so it is unclear what the requirement to act consistently with Treaty obligations means in their case. TAs may sometimes have obligations under a Treaty settlement Act, but they are already required to comply with that legislation and it is difficult to see what cl 41 adds. The current wording, which focuses on "treaty settlement obligations", also excludes iwi and hapū who have not yet entered into Treaty settlements. This is anomalous. Further, in some parts of the country Treaty settlements have not yet been reached: in those areas, cl 41 (because it relates to "Treaty settlement obligations" as defined in that clause) would impose no obligations on WSPs in terms of how they engage with or otherwise interact with iwi and hapu. A more appropriate direction under cl 41 would be to take appropriate account of the principles of the Treaty of Waitangi/ Te Tiriti o Waitangi (rather than "Treaty settlement obligations" as defined). This clause (relating to Treaty settlement obligations) in insufficient recognition at the governance level of the importance of meaningful partnership between the WSP and Māori. The clause should be reframed as a general requirement for WOs (or WSPs) to act in a manner which is consistent with Treaty principles. Cluase 41 should also follow the precedent of s81 LGA which states that a local authority must establish and maintain processes to provide opportunities for	A water services provider must— (a) take appropriate account of the principles of the Treaty of Waitangi/te Tiriti o Waitangi and Te Mana o te Wai; and (b) establish and maintain opportunities for Māori to contribute to its decision-making processes.

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	Māori to contribute to the decision-making processes of the local authority. WSPs that are territorial authorities already have this obligation under s81: the effect of cl 41 as amended would be to place WOs under the same obligation. It is anomalous that only some WSPs (ie TAs, or a regional council that provides water services) should be required establish and maintain opportunities for Māori to contribute to the WSP's decision-making processes. In addition, cl 41 should require a WSP to give effect to Te Mana o te Wai when performing its functions, power, or duties under the Act. This would be consistent with s14(2) of the Water Services Act 2021, which states that "when exercising or performing a function, power, or duty under this Act, a person must give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to the function, power, or duty". Importantly, however, it would go further insofar as the Water Services Act 2021 relates primarily to the obligations of *drinking water* suppliers, whereas WSPs under the Bill are also responsible for wastewater and stormwater services.	
Governance of water organisations: consumer trusts		
44(3)	This says that "a consumer trust exists for the sole purpose of the ownership for which it is established, and its trustees must not have any roles and responsibilities other than their roles and responsibilities as shareholders in a water organisation." Presumably the words "of the ownership" are a typo and should be deleted. The requirement that trustees not have any other roles or responsibilities would literally exclude anyone from being a trustee. Everybody has some roles or responsibilities. The apparent intention is for a trustee to only have one role vis-à-vis the WO. The reference to reference to roles and responsibilities of the trustees should therefore be amended to read "trustees must not have any roles	Clause 44(3) should be redrafted accordingly.

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	and responsibilities in relation to a water organisation other than their roles and responsibilities as shareholders in a that water organisation."	
Exemptions relating to water organisations and consumer trusts		
55(2)	This subclause allows a TA to apply to the Secretary for Local Government for an exemption from the clause 37 requirement that WOs must be wholly owned by local authorities or a consumer trust, if it "intends to establish a water organisation that is owned by shareholders of a co-operative company". This ability to apply for an exemption goes against the Government's August 2024 LWDW announcements, which clearly stated that water services could not be privatised, and the rationale for it is unclear. The ability to obtain an exemption from these ownership restrictions opens to the door to the possible privatisation of water services, by allowing shares in a WO to be owned by an entity other than a local authority or consumer trust.	Delete clause 55(2).
55(4) and 55(6)	Clauses 55(4) and (6) appear to be duplications.	Remove duplication.
Part 3 – Provision of water services: operational matters		
Subpart 1 – Charges for water services		
60	Clause 60(1) states that a WO "may set and collect charges" for water supply, stormwater and wastewater services. It is unclear whether these charging powers are intended to be a code i.e. exclude non-statutory charges such as contractual charges. On the face of it, the wording is permissive ("may") which would not rule out contractual charging, but the fact that the subpart does not apply to Watercare, which uses contractual charges, suggests the regime in the Bill is intended to be instead of rather than in addition to contractual charging. Where	Assuming the intention is that WOs may not use contractual charging, cl 60(1) should be amended to state that a WO may only set or collect charges for water supply, stormwater and wastewater services in accordance with this Act. Alternatively, cl 60 should be amended to explicitly recognise a WO power to set both statutory and

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	contractual charging is permitted, e.g. in a development agreement, that is expressly authorised (cls 106 to 106).	contractual charges, and set out limitations (if any) applying to both types of charge (for example, the prohibition on property value-based charges in cl 60(6)). Presumably contractual charges would also have to be set uniformly across all contracting customers, rather than bespoke.
59 and 60(1)	Clause 60(1) states that a *WO* may set and collect charges for water supply services, stormwater services and wastewater services. Clause 60 does not apply to the wider category of "water service providers", which includes territorial authorities. It is not clear in policy terms why councils should not be subject to section 60, unless it is considered they already have adequate powers to fund water services through rates, charges to recover costs under s150 of the LGA, or contractual charges for goods and services supplied under s12 of the LGA. Those charging powers are not as clear as those specified in cl 60, and again it is not clear why in policy terms a TA WSP should have different charging powers to a WO.	Amend cl 60 so that it applies to all WSPs, not just WOs.
60(2)	Clause 60(2) sets out a non-exclusive list of the matters for which charges may be set. However, the charges for providing the specified services (water supply, stormwater or wastewater) in cl 60(2)(a)) are limited to charges for the initial connection and therefore that clause is too narrow. Presumably charges for water supplied to or wastewater discharged from a property are intended to be covered by the more general clause 60(2)(d) which refers to charges for meeting costs incurred by the WO in performing its functions. However, charges for, say, wastewater services provided to a property (or indeed all properties) in the service area may not precisely reflect the cost of providing that service. The reference to charges "meeting the costs" that the WO incurs may encourage customers to challenge certain charges on the basis that they are not demonstrably "cost-based". There should be a broader power to charge for water supply, wastewater and stormwater services that is not necessarily constrained by	Amend cl 60(2)(a) to read "any part of the services provided by the water organisation specified in subsection 1 (the **specified services**) including charges for the supply of water and for the connection to or disconnection from 1 or more of the water organisation's water services networks."

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	the cost of providing each service. Regulation by the Commerce Commission will provide protection against excessive charging. Clause 60(2)(a) should cover any services provided by the WO, including water services supplied and connection/disconnection to/from the WO's networks.	
60(2)(b)	This is presumably a reference to development contributions in which case there should be a bracketed cross-reference to subpart 2. Further, the same language – that in cl 78(1) – should be used when describing what the relevant charge is for.	Cross-reference to development contributions in part 3 subpart 2. Amend cl 60(2)(b)(i) to read "the additional or increased demand on water services infrastructure used for 1 or more of the specified services".
60(4)	This clause sets out various things that a WO may do "when determining whether to set a charge, or how a charge is to be collected". However, the matters listed in paragraphs (a) to (e) are not considerations relevant to deciding whether or not to set a charge – they are worded as different types of charges that may be imposed. There should be explicit recognition in cl 60 that A WO may which to set reduced charges for vulnerable customers, or remit charges payable by these customers (noting that if a TA was the WSP, such customers might qualify for rates relief).	Replace the opening words of cl 60(4) with "A water organisation may set (by way of example)…" Add a new para (f) to cl 60(4) as follows: (f) set reduced, or remit, charges payable by vulnerable customers.
62(2) and (4)	These clauses set out who is liable to pay a serviceability charge. This differs from (but is very similar to) the persons who are generally liable for water services charges under cl 67. It is unclear why a different formulation has been used in cl 62. Given that relevant billing information will come from the TA (cl 73), the cl 67 approach should be used for cl 62 as well. This is the information which will be held by the TA in its rating information database.	Amend cl 62(2) to read "The water organisation may set a charge (**serviceability charge**) for the property." Amend cl 62(3) to read "However, if the property is 50% non-rateable land specified in Part 2 of Schedule 1 of the Local Government (Rating) Act 2002, the charge for the property may be no more than 50% of

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		the charge which would otherwise be set for the property."
63(1)(a)	This clause provides for a transition from property value-based rates charging to non-property-based charging under the Bill. We have a couple of drafting recommendations.	Delete "that is recently established" in cl 63(1)(a) (imprecise language and doesn't seem to add anything). Replace "on the basis of property valuation, including the annual value, land value, or capital value of their property" at the end of cl 63(1)(b) with "on the basis of the property's rateable value". Replace "property valuation" with "rateable value" throughout.
64	This clause requires a WO to publish a list of water service charges set under cl 60. See our comment on cl 60 above as to whether contractual charging is also permitted. If yes, these should also be posted on the WO's website.	If contractual charging is possible, amend cl 64 to refer to water services charges as meaning charges set under cl 60 or through a contract between a WSP and its customers.
64(1)(a)	This clause contains the first reference (in passing) to an "annual billing period". There seems to be no good reason for requiring a WO's charges to be fixed for 12 months. The purposes of the Bill include flexibility and WOs are not subject to the rating cycle of TAs.	Remove the reference to "annual billing period" in cl 64(1)(a). Amend cl 60 to expressly state that the charges can be set from time to time. Alternatively, if the intent is that charges must be annual, cl 60 should state that.
64(2)	This clause refers to "customised or otherwise unusual" charges. This implies that cl 60 charges can be individualised rather than uniformly applied. If so, this should be expressly stated in cl 60. The expression "customised or otherwise unusual" also requires clarification.	Clarify whether non-uniform charging is possible and if so provide for that expressly in cl 60. Use a more precise expression than "customised or otherwise

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		unusual" charging, perhaps by reference back to the above addition to cl 60.
65	This clause prohibits double charging by a WO/TA for the same service. However, it is not clear how the WO and the TA could ever be providing the same service. Clause 66 covers the transitional period where there is transfer to a WO. Even if that situation can arise, the clause says the TA can't charge if the WO does (cl 65(1)) and the WO can't charge if the TA does (cl 65(2)). This creates a possible standoff or "first come first served" scenario. Assuming the possibility of double charging could arise, the clause needs to identify whose charges prevail.	Delete clause in its entirety unless it can be demonstrated that WO and TA could in theory both be providing the same water service. If that situation can arise, specify which charge takes precedence.
67(1), (4) and (5)	Clause 67 sets out who is liable for water services charges. It is modelled on the liability for rates under the LGRA. The identification of liable person in cls 67(1)(b) and (c), and applying cls 67(4) and (5), is complex and based on the LGRA provisions. These were required transitionally in 2002 when the LGRA moved from occupier to primarily owner liability, and existing leases had not been drafted in that context. There is a case for simplification given that, with the passage of time, most leases will now provide for who, as between lessor and lessee, is liable. However, as this information required for WO charging will come form the TA, the same approach as in the LGRA must be used. However, as that there are no material differences between cl 67(1) and the definition of "ratepayer" in the LGRA, it would be much more straightforward to say that the person liable for water services charges is the ratepayer of the property under the LGRA. If cl 61(1) is to remain in the present form, it should be made clear (as in the LGRA) that the persons liable in paras (a), (b) and (c) are alternatives rather than jointly	Amend cl 67(1) to say "The ratepayer of a property is liable to pay water charges (other than trade waste charges) in respect of the property", with a definition of "ratepayer" later in the clause. If, contrary to the above, the more detailed cl 67(1) is retained, add "or" at the end of cls 67(1)(a) and (b).

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	liable. Clause 67(2) indicates that in relation to cl 67(1)(c) but it needs to be stated throughout.	
70	The Bill does not contain any clauses dealing with the mechanics of invoicing and payment. This may be welcomed as giving flexibility for the WO to determine its own systems. However, one matter which should be in the Bill is to say **when** charges are payable before they became a debt. The Bill should impose an obligation on the liable person to pay the charges on or before the due date. This would most logically go between cls 69 and 70 or at the beginning of cl 70.	Add new cl 70(1) "A water services charge must be paid by the due date." This will probably require a definition of "due date" to be added in the Bill. The current cl 70 will then become cl 70(2).
Penalties on unpaid water services charges		
71	This clause authorises the addition of penalties on unpaid charges. The clause also refers to "charges for the financial year" – see comment on cl 64 that charges should not have to be annual. The clause requires the penalty regime to be authorised by the WO's board. The charges themselves do not specifically require board authorisation (cl 60) which seems to be inconsistent.	Delete reference to charges set for the financial year, and instead say the resolution must be made before or at the same time as the setting of the charges to which the penalties may be applied. Make cls 71 and 60 consistent as to whether a board resolution is necessary.
72	Clause 72 sets out the types of penalties which may be added, and when. It is based on the penalty regime in the LGA. The clause seems overly complicated for present purposes especially the timing requirements. The LGRA provision applies in the context of prescribed timing and other requirements for setting the rates, invoicing and payment which do not apply here. The clause should therefore be simplified so the penalty regime us more appropriate to charging by WOs.	Simplify and tailor to charging under the Bill. Suggest that that penalties should be able to be added: • on default in payment of a particular invoice (except an invoice for contributions) on or before the due date of that invoice;

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	It is suggested that penalties should be able to be added: • on default in payment of a particular invoice on or before the due date; • every 6 months thereafter, on the full amount of any outstanding payments at that date. Consider whether this should apply to development contributions - probably not but the terms of any requirement to pay interest on unpaid DCs should be in the contributions policy.	• every 6 months thereafter, on the full amount of any outstanding payments at that date.
Subpart 2 – Development contributions		
General	The Bill largely transposes the development contributions regime from the LGA. The Treasury is reviewing development contributions under the LGA on the basis that they have insufficiently recovered growth related capital expenditure.	Before the Bill is enacted, planned changes to the LGA development contribution regime should be carried over so that WOs (like TAs) benefit from simplification of the development contributions regime.
78(2)	This clause states that a WO "must only recover a cost under this subpart if it incurs the cost in relation to the water services infrastructure that it owns or will own". This would prevent recovery of costs through development contributions, where a predecessor to the WO, i.e. a TA, had incurred that cost. This will be a significant portion of the capital expenditure which should be funded through development contributions. The position taken in cl 78(2) seems to be inconsistent with other provisions in the Bill, for example, cl 84(2).	Amend cl 78(2) to refer (as well) to a cost that the WO or its predecessor (being the TA who transferred the infrastructure to the WO) has incurred.
80	The power to require development contributions in cl 80(1) is modelled on the equivalent power in s 198 of the LGA 2002. The triggers for requiring contributions are the granting of resource consent, building consent or service connections. This does not include a significant increase in demand for water or wastewater services above baseline demand (an important trigger for the charging of	Amend cl 80(1) of the Bill to add as a trigger for requiring a development contribution a significant increase in baseline demand for water and wastewater services, as defined in a publicly available policy of the WO. This would also require a corresponding widening of the definition of

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	infrastructure growth charges by Watercare). A significant increase in demand – for example, by adding an additional production chain in a high water-using factory, such as a brewery, would not necessarily require resource consent or building consent, and therefore trigger the power to require development contributions under cl 80 of the Bill.	"development" in cl 76 of the Bill to cover a significant increase in demand for water or wastewater services above baseline demand.
83(3)(b)	This refers to the amendment to a TA's development contributions policy not needing to follow the process in the LGA or the RMA. However, an "RMA process" could never be used to amend a development contributions policy.	Delete reference to the process in the RMA.
84	Clause 84 is a key provision setting out the circumstances in which development contributions may be required by a WO. Clause 84(1)(b) is limited to capital expenditure incurred by the WO, however cl 84(2) seems to envisage that the predecessor TA's capex may also be covered. In our view that is the appropriate policy position. The principle should be that all growth-related capital expenditure on water infrastructure, whether incurred by the predecessor TA or the WO, and either in the past in anticipation of development or in the future, is recoverable by the WO through development contributions. Clause 84(1)(b)(ii) refers to the situation of a WO being liable to pay a development contribution to a TA: it is unclear what issue is being addressed here as a WO is not typically liable to pay development contributions (developers are).	Add to clause 84(1)(b) the words, "a predecessor territorial authority or" before the words "the water organisation". Delete clause 84(1)(b)(ii).
85	Clause 85 states that a WO may develop a development contributions policy (**DCP**), and if it does it must consult under section 82 of the LGA. Although it would be expected that this consultation would include TAs, there is no specific requirement for the WO to consult with TAs, or for the WO to consider the content of a TA's DCP when developing their own to ensure alignment/integrated approach.	In cases where both a WO and a TA in the service area have their own DCP, require WO to specifically consult with TA and take into account its DCP when developing its own DCP.
Development contributions policy		

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91(6)	In cutting and pasting the LGA provisions, the draftsperson has overlooked this reference to a TA.	Change "territorial authority" to "water organisation".
92(6)	This clause covers the situation where the WO and TA agree for the TA to administer some or all of the WO's DCP. This includes determining the level of contributions when one of the triggers for a development contribution is met. If the triggers are extended (see comment on cl 80), this new trigger will need to be covered in cl 92(6)	Include amongst the list of matters covered by the administration of a DCP "determining the level of development contributions a person is liable to pay when there is a significant increase in demand for water or wastewater services above baseline demand."
93	This clause authorises a TA to "extend" its DCP to cover the "operations" (which should be "infrastructure") of a WO, if the WO has not adopted its own DCP. The clause says that this extended policy must include the information required by cl 87 but is otherwise silent on whether the LGA or Bill provisions apply to the extension. The likely default position is that the LGA applies because it is still the TA's policy, however cl 93(4) suggests that the LGA consultation provisions will not automatically apply. This leaves uncertainty and risk of challenge.	Clarify the legal position when a TA extends its DCP in terms of the applicable legislation.
Development agreements		
104 to 106	These clauses relating to development agreements are cumbersome and unnecessary for commercially focused WOs, as distinct from local authorities. At present, Watercare enters into development agreements without relying on or requiring statutory provisions of this nature.	Delete cls 104 to 106.
Refund of development contributions, etc		
108	This clause sets out the circumstances in which the WO must refund a development contribution. Consistent with the principle in the comment on cl 84, there should also be a refund by a predecessor TA, in the same circumstances, to cover any contribution required and received by it.	Extend the clause to cover refunds by TAs as well.

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109	Clause 109 exempts the Crown (apart from some specific examples) from paying development contributions. Crown developments generate demand for water services infrastructure in the same way as other developments. Failure to recover development contributions from the Crown increases costs that need to be recovered from development contributions payable on non-exempt development (which is unfair on those developments). Alternatively, the WOs customer are left to carry the shortfall despite them not creating the need for, or benefitting from, the additional capex.	Delete clause 109.
Subpart 3 – Water services networks: connections		
113	This sets out the 3 steps in the approval process for connections. Step 1 refers to the WSP being satisfied "in theory" that there is network capacity. "In theory" introduces uncertainty and seems unnecessary.	Delete "in theory".
Subpart 4 – Accessing land to carry out water services infrastructure work		
General requirements		
116	This clause specifies the WSP's powers to enter land to carry out works, and the process for that. The process is unworkable, especially for reactive repair work such as fixing leaks. The Bill does not give a general power to enter land, even for non-intrusive actions, without going through the formal notice process in cl 117. Operationally, this will be extremely inconvenient. Under the LGA, the consent process is only needed when works on the land are proposed. The LGA gives a general power of entry onto land (but not a dwellinghouse) in s 171 "for the purpose of doing anything that the local authority is empowered to do under this Act or any other Act". The Bill needs an equivalent provision, with the cl 116 and 117 processes limited to entry for the purposes of carrying out physical works on the land.	Add a general power of entry equivalent to s 171 LGA. Limit cls 116 and 117 to entering land for the purpose of carrying out physical works on the land. In relation to cl 116(4): • Delete "(whether new or existing)" as redundant. Amend "relating to water services" with "relating to access to or carrying out work on the land".

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	Clause 116(4) deals with the situation where there is an agreement in place. We recommend some minor drafting changes.	
118	Once notice of the proposed works is given, the owner may give consent subject to reasonable conditions. The WSP may not enter the land or carry out the works except in accordance with those reasonable conditions (cl 116(3)(a)). However, cl 118(3) says that if the owner fails to comply with subcl (1), which includes giving consent subject to reasonable conditions, the WSP may start the work. A significant area of dispute is likely to be whether conditions imposed by the owner are reasonable. It is unclear whether the WSP can proceed with the works when it regards the conditions as unreasonable. Technically if the conditions are unreasonable, the owner has not complied with cl 118(1) and the WO may start the works. However, what is reasonable or not may be a grey area. In practice, private landowners often seek payment of financial compensation as a condition of granting access to their land. The Bill provides in cl 121 for a mechanism to deal with this situation, however it involves going straight to the District Court and puts the onus on the provider to pursue it. It is not clear why a landowner decision to impose conditions which the provider considers unreasonable (such as a condition requiring the WSP to pay financial compensation unrelated to any loss incurred by the landowner) should be treated, procedurally, any differently to a straight refusal of consent. The former is in substance also a refusal of consent. We therefore suggest that the process in cls 119 and 120 apply in both situations. In our comments on cl 120 below, we also discuss the possibility of a simplified process but if that ids adopted it should also apply equally to both consent with conditions and refusal of consent.	Amend cl 118 to provide that if the WSP and the owner cannot agree whether a condition is reasonable, the process in cl 119 applies (and the WSP may not start the work in the meantime, but can start work after the hearing under cl 119 is held and the WSP decides, after the hearing, to proceed with the works).

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119	This sets out the process when consent has been declined. It involves a hearing before the WSP and a right of appeal to the District Court. As suggested immediately above, we suggest it also applies when there is a dispute about whether a condition imposed by the owner is reasonable. As drafted, the process in cl 119 applies where "the owner has not consented to the work within 30 working days of receiving the notice". On the face of it, this would cover the situation where an owner has not responded at all to the WSP's notice. This needs to be changed to say that the owner has declined consent within the 30-day period (which is consistent with the clause heading).	Amend cl 119(1) to cover a failure to agree reasonable conditions as well. Replace cl 119(1)(b) with "the owner has declined consent to the work within 30 working days of receiving the notice".
120	Clause 120 covers District Court appeals relating to land access. This clause (or cl 119) should state that the WSP may proceed with the works if its determination under cl 119 has been given to the owner and no appeal to the District Court has been lodged under s 120 (this must be within 28 days of notification). Under cl 120(5), on appeal to the District Court, the Court may authorise a water provider to carry out construction works or infrastructure placement only if satisfied that "no practical alternative exists". This sets the bar too high – notably higher than other equivalent requirements such as to give adequate consideration of alternatives – see s 204 of the Water Services Entities Act, or s 171 of the RMA. The test being set in this way is likely to prevent WSPs from being able to provide infrastructure on private land due to the inability to meet the "no practical alternative" requirement.	Provide in cl 119 or 120 that the WSP may proceed with the works if its determination under cl 119 has been given to the owner and no appeal to the District Court has been lodged. Amend cl 120(5)(c) to say: "in relation to the construction or placement of the water services infrastructure, the water services entity has given adequate consideration to alternative routes."
121	As discussed under cl 118 above, this clause imposes different processes and tests in the District Court depending on whether a private landowner imposes conditions on their consent, or refuses. In practice, unreasonable conditions imposed by a landowner are tantamount to refusal – for example, permission to	Simplify cls 119 to 121 to have a single process to cover refusal of consent and the reasonableness of conditions.

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	undertake works on private land is only granted if excessive compensation of $5 million is paid. We have considered a simplified approach for all objections, with a single step of a hearing before the District Court. On balance we consider that may be a false economy. Given the delays in getting heard before that Court, this procedure would allow an objector to refuse consent and just wait the many months before a hearing and then get serious at the last moment. The works could not proceed in the meantime. On the other hand, having a hearing before the WSP first ought to focus attention much earlier on and will involve more engagement between the WSP and the owner and therefore more potential for resolution at an early stage.	
Water services infrastructure works on roads		
131	This is the definition clause for the purposes of water infrastructure work on roads. The key definition of "road" in the Bill is a combination of the definitions in the Local Government Act 1974 and the Land Transport Act 1998. As such the definition is much too broad. The definition includes "a street and any other place to which the public have access (including a State highway and a public footpath), whether as of right or not", which comes from the LTA where it is used for a (very different) traffic regulation purpose. This definition would extend to private land e.g. supermarket carparks and is unsuitable for the purpose of delineating a WSP's power to carry out works in roads. As in the equivalent provision relating to Watercare (s 65 of LGACA, which is proposed to be repealed), the WSP's powers should be in respect of "roads" as defined in the LGA74 i.e. the narrower category of "legal roads" together with "public land", which does not need to be defined.	Amend the definition of "road" to "a road as defined in section 315(1) of the Local Government Act 1974, and which includes State highways and Government roads, but excludes motorways". Extend the powers in relation to "roads" in cls 132 and 133 to "roads and public land".
135	This clause says that if a person or body fails to notify the water service provider of conditions in accordance with section 134, "those conditions" are not imposed	Reword clause as follows:

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	and the water service provider may commence work. The reference to "those conditions" is non-sensical, where no conditions have been notified.	if a person or body fails to notify the water service provider of conditions in accordance with section 134, ~~"those conditions" are not imposed and~~ the water service provider may commence work.
Subpart 5 – Drinking water catchment plans		
143	It is not apparent why a territorial authority should have a role in issuing a drinking water catchment plan, where a WO is providing the relevant water services. A TA that has transferred its water services functions to a WO is likely to lack the capability to produce such a plan. While a TA can delegate the preparation of a drinking water catchment plan to the WO under cl 143(2), it is not required to do so. The responsibility to prepare the plan should automatically rest with the relevant WSP.	Amend cl 143 to make the WSP (rather than a TA) responsible for issuing a drinking water catchment plan.
143 and 144	The drinking water catchment plan requirements are largely duplicated and are poorly integrated with existing requirements under s 43 of the Water Services Act 2021 (WSA) for a source water risk management plan. The WSA defines source water as the water body from which water is abstracted for use in a drinking water supply (for example, a river, stream, lake, or aquifer). A source water risk management plan must identify any hazards that relate to source water, including emerging or potential hazards; and assess any risks that are associated with those hazards; and identify how those risks will be managed, controlled, monitored, or eliminated as part of a drinking water safety plan.	Amend cls 143 and 144 to reduce duplication with s 43 of the Water Services Act 2021.
146	This clause requires that there be consultation on a drinking water catchment plan. It is not clear why there should be a requirement to consult in respect of any aspect of a plan other than for a bylaw which has regulatory effect and restricts rights and obligations. This is an example of unnecessary compliance burden being placed on parties under the Bill.	Delete consultation requirements except where a drinking water catchment plan contains a recommendation for a bylaw.
Subpart 6 – Trade waste		

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
Trade waste plans		
149	This interpretation clause includes a definition of trade waste. The definition is too narrow, in that it could exclude tinkered waste and waste from a range of non-domestic premises (e.g community kitchens, swimming pools, landfills) that is not "discharged in the course of an industrial or trade process".	Replace trade waste definition with definition taken from NZS 9210: ch 23 model bylaw.
150	This clause requires TAs to issue a trade waste plan, although the preparation may be delegated to a WO. The trade waste plan must set out the approach that the TA it to take to regulating TW in the district and the discharge of trade waste into wastewater networks in the district. There is substantial duplication between the trade wate plan and a trade waste bylaw (see for example cl 150(5) and (6)), notwithstanding that only the latter is effective as a regulatory document. This begs the question as to what purpose is served by having a trade waste plan, in addition to a bylaw. The approach taken to regulation can be apparent in the trade waste bylaw itself. There is at present no requirement for a territorial authority to have trade waste plan in addition to its trade waste bylaw. It is also nor entirely clear whether the trade waste plan itself is intended to have regulatory effect (we assume not). If clauses 150 to 152 are not deleted, responsibility for trade waste plans should rest with the WSP (who will be operating the wastewater network), rather than the TA.	Delete clauses 150 to 152, 154, and all references in other clauses to a trade waste plan. If clauses 150 to 152 are not deleted, amend cl 150 to make the WSP responsible for issuing a trade waste plan.
151	As with the drinking water catchment plan, it is unclear why there should be a requirement to consult in respect of any aspect of a trade waste plan other than a recommendation for a bylaw which has regulatory effect, and restricts rights and obligations.	If clause 151 is not deleted as per previous recommendation, delete consultation requirements except where a trade waste plan contains a recommendation for a bylaw.

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152	This clause illustrates the duplication in these provisions by requiring a TA to consider its own proposal or recommendation in a trade waste plan to make a trade waste bylaw.	Delete clause 152.
154	The clause requires review of a trade waste plan after 10 years. It is modelled on LGA provisions requiring local authority review of bylaws (ie regulatory documents) 5 or 10 years after they are made (sections 158 – 160). As the document with direct regulatory effect, it is the trade waste bylaw rather than the trade waste plan that should be subject to review requirements.	Amend clause 154 to require review of a trade waste bylaws (rather than trade waste plans).
154(5)	This clause is modelled on a power to make minor changes to, or correct errors in, bylaws in s165 of the LGA. However, the comparison is flawed because unlike a bylaw, trade wate plan presumably does not have regulatory effect, and so changes and corrections could never affect existing rights, interests and duties.	Amend clause 154 to allow a territorial authority make minor changes to, or correct errors in, trade waste bylaws (rather than trade waste plans).
Trade waste permits		
155 - 159	Clause 155 provides for applications for trade waste permits to a TA. Although the bylaw is made by the TA, the permit system must be administered by the WSP which operates the wastewater network and knows its limits. It undermines the transfer of functions to a WO if a TA is able to issue permits in respect of trade waste discharges to the wastewater network operated and/or owned by the WO. If the TA remains the WSP, it should issue permits in its capacity as WSP rather than TA. Clause 163 seeks to address this by saying that where the TA has delegated the administration of trade waste bylaws to a WSP, references to the TA should be taken as references to the WSP. However, this approach is clumsy and undesirable – a WO must be issuing permits itself and in its own right (and the bylaw should provide for this), not as a delegate of the TA.	Change "territorial authority" to "water service provider" throughout cl 155 – 159.

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	The clause gives a power to seek an internal review of a decision to decline a trade waste permit. However, there are not the normal "lead up" clauses which provide for applications to be made and determined. This may be welcomed as it should give the WSP flexibility to design its own procedures.	
163	The clause deals with delegation of administration from the TA to the WSP. As stated above in relation to cl 156, there should be no need for this delegation. The bylaw and permit system should apply directly to a WO who can exercise the statutory powers in its own right.	Delete cl 163.
Subpart 7 – Management of stormwater networks		
167	<u>Definition of 'critical infrastructure'</u> This definition refers to "stormwater infrastructure", and to "infrastructure of that kind that conveys stormwater to, or receives stormwater from, an overland flow path or a watercourse". This creates doubt as to whether a watercourse could itself be critical infrastructure, and displays a bias in favour of hard infrastructure being the only critical components of a stormwater network, when natural watercourses may be equally important. In our view, paragraph (b) should be amended to refer to a watercourse whose failure will prevent or seriously impair the conveyance of stormwater in a network.	Amend para (b) in definition of critical infrastructure as follows: includes ~~infrastructure of that kind that conveys stormwater to, or receives stormwater from,~~ <u>any</u> watercourse whose failure will prevent or seriously impair the conveyance of stormwater in a network ~~that crosses over or beneath private land~~
171	This clause states that a WSP must not make a stormwater network bylaw in relation to an overland flow path within or crossing a transport corridor. Roads will typically be amongst the most significant overland flow paths in any urban stormwater network. It is not clear why they and other transport corridors should be completely excluded from regulation under a bylaw – presumably, it is because regulation may impair the functionality of roads etc as transport corridors.	Delete clause 171.

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	Clearly, some general requirements in relation to overland flowpaths – for example, prohibitions on placing obstructions within the flowpath – should not apply to transport corridors, which will have infrastructure such as bus shelters or other street furniture located within them for good reason. But this is not a reason to exclude any ability to regulate overland flow paths on transport corridors through bylaws.	
168 and 172	Clauses 168 and 172 relate to stormwater risk management plans and stormwater bylaws. There is no requirement that shareholders of a WO (if the WSP is a WO), or transport corridor operators, are consulted during the development of these documents. In the case of the bylaws (s172), there also does not seem to be a requirement that WSPs consult with the community. When TAs develop bylaws under the LGA, there are prescriptive consultation requirements.	Clauses 168 and 172 should be amended to require consultation with shareholders (where the WSP is WO) and transport corridor operators in developing stormwater risk management plans and stormwater bylaws. Clause 172 should require WSPs to consult with the community on bylaws, modelled on LGA requirements.
Part 4 – planning, reporting and financial management		
181	This clause states that a number of provisions relating to CCOs in Part 5 of the LGA, starting at section 64, do not apply to a CCO that is a WO or its shareholders. Implicitly, the provisions in Part 5 before section 64 *do* apply. These include sections 58 and 59 of the LGA relating to the role of directors and the principal objective of CCOs. The application of section 59 in particular is problematic, given that this states that the principal objective of a CCO is to achieve the objectives of its shareholders as set out in the SOI: and inconsistent with cl 15 of the Bill which sets out the objectives of WSPs (including WOs). As noted above, cl 15 carries over the "good employer" obligation in s59 of the LGA, but not other objectives (such as to "exhibit a sense of social or environmental responsibility"). Section 60 of the LGA states that decisions of a CCO must be made in accordance with the SOI and constitution, establishing the primacy of these documents.	Add ss 58-63 to the list of LGA provisions that are stated in cl 181 as not applying to a CCO that is a WO or its shareholders. However, that will require adding a new clause, equivalent to s60 of the LGA, requiring decisions of the WO to be made in accordance with the WSS (rather than SOI) and constitution. This recommendation reflects our recommendation below to delete cl 186 (the requirement for a WO to give effects to a SOE)

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	However, this is inconsistent with the Bill which removes the requirement for an SOI in the case of a WO that is a CCO (s64 of the LGA is expressly excluded), and in its places establishes the water services strategy (WSS) as the primary direction-setting document. Equally, the s60 requirement for a CCO to make decisions in accordance with its constitution is an important one, which should be carried over into the Bill and apply to WOs. As the Bill stands, there is considerable confusion over how ss 58 - 60 of the LGA in particular can apply to a WO that is a CCO at the same time as provisions in the Bill.	
Subpart 1 – Planning *Statement of expectations*		
184	Clause 184 relates to the statement of expectations (**SOE**). The purpose of the SOE is stated in subcl 3 as being to set out the shareholders' expectations of the WO; set the priorities and strategic direction of the WO; and inform and guide decisions and actions of thew WO and the WO's preparation of its WSS. The purpose of SOE under the Bill is therefore significantly greater than a SOE under s64B of the LGA, which sets out a shareholder's expectations as to how a CCO is to conduct its relationships, rather than objectives or priorities for the CCO. Clause 184 allows the shareholders of a WO to set the direction and priorities for the WO (for a period of 10 years), while under cl 186 a WO "must give effect to" the SOE. In our view this places too much power in the territorial authority shareholders; it begs the question why a territorial authority would establish a WO at all, or why anyone would want to become a director of the WO, if a TA retains such extensive control over the WO's strategic direction. It may be particularly hard to attract experienced directors from the commercial world to the WO's board.	Amend clause 184 so that it more closely resembles s64B of the LGA, and does not address the objectives and priorities of the WSP. Alternatively, confine the clause 184 to the matters currently set out in cl 187(2).

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	This regime also reduces the difference between two the three options currently before TAs in terms of delivering water services i.e. continued delivery of water services by the TA, or delivery via a WO. The option of "arms-length" service delivery via a CCO is weakened through the extent of control reserved to the WO's shareholders. The Bill also creates considerable duplication between the SOE and the WSS. Thus, while one of the purposes of the SOE set the priorities and strategic direction of the WO (cl 184(3, and see also the content requirements in cl 187), equally a WSS also addresses strategic matters and must include the strategic priorities of the WSP, and the objectives and expectations that apply to the WSP: see Schedule 3, cl 2. Clause 187(3) also states that for a WO, the purpose of the WSS is also to provide an opportunity for the shareholders of the water organisation to participate in the WO setting its strategic intentions and performance framework; and influence the strategic direction of the WO. Yet the shareholders already have the opportunity to set that direction through the SOE. This duplication underscores the need to confine the SOE largely to matters of process (*how* a WO conducts its operations and relationships), while matters of substance (strategic direction, priorities, outcomes etc) are set out in the WSS.	
186	This clause states that a WO "must give effect to a statement of expectations provided by the shareholders of the water organisation". The SOE is a high-level document, and to some extent aspirational – the document that sets out what activities a WSP intends to undertake in the WSS (the equivalent to the SOI under the LGA. Reflecting that "split" between high-level guidance and operational documents, in the LGA there is no requirement to "give effect to" a SOE under s64B, but there is a requirement (in s60) for decisions of a CCO to be made in accordance with the SOI. It is unclear what "giving effect to" a SOE (if the SOE	Delete cl 186.

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	retains the broad content set out in cl 187, or even if it is a narrower document based on s64B of the LGA) would mean, or how compliance with that obligation could be measured. Currently, the consequence for a CCO failing to appropriately taking into account a SOE under s64B of the LGA is that the shareholders may (and likely would) comment on or modify the SOI prepared by the CCO's Board, or if the failure is significant enough, dismiss or decline to reappoint the CCO's directors. These "sanctions" remain more appropriate than imposing a direct (and unclear) requirement to "give effect to" the SOE.	
187	Clause 187 sets out the required content of a WO's statement of expectations. This reflects a very expansive view of what a SOE should cover. Clause 187(1) in particular allows shareholders to set expectations as to how the WO is to conduct its operations, by stating the SOE must include how the shareholders expect the WO to meet the objectives set out in section 15, and to perform its duties and functions and exercise its powers. There may in fact be limited scope for the shareholder to set expectations as to how s15 objectives are met, given that the WO will be required to meet requirements imposed by the Water Services Authority and Commerce Commission. In circumstances where a territorial authority has chosen to establish a WO rather than remain the WSP itself, the directors of the WO rather than the territorial authority (and in particular, its elected members) are better placed – in terms of relevant experience and expertise – to determine these matters. In particular, a territorial authority that has established a WO is unlikely to retain in-house expertise (at officer level) in relation to water services, to assist in the setting of objectives and priorities.	Delete cl 187 or confine it to cl 187(2).

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187(1)(e)	Clause 187 sets out the required content of a WO's SOE. This includes "a requirement that the water organisation must act in accordance with any relevant statutory obligation that applies to a shareholder that is a territorial authority". As such an obligation will apply to the TA and not the WO, it is hard to understand what this means for the WO. It is also unclear what a "relevant" statutory obligation would be. A similar comment can be made in relation to cl 187(2)(c). The example given (obligations to hapū, iwi and other Māori organisations) is not unreasonable, but the provision could theoretically apply to any TA obligation, which is inappropriately open-ended. Clause 187(2)(d) is even more open-ended and objectionable for that reason. A WO should not be in the position of having to carry out a shareholder's obligations on its behalf.	Delete or narrow cls 187(1)(e), (2)(c) and (2)(d).
192	The purposes of the WSS set out in this clause include for the WSP to state publicly the water services activities that it intends to carry out to achieve the objectives specified in section 15 and any other outcomes: cl 192(1)(a)(i). This wording is based on s64(2)(a) of the LGA relating to statements of intent. A further purpose of a statement of intent under the LGA is to provide an opportunity for shareholders to influence the direction of the organisation: s64(2)(b). This opportunity is given through the LGA Schedule 8 process, under which the shareholders have the opportunity to comment on a the CCO's draft SOI, and to modify an adopted SOI. Clause 196 of the Bill relating to the process for making a WSS is loosely based on Schedule 8, insofar as it allows shareholders to provide comments on a draft WSS, or require the WO to amend the draft strategy.	Amend cl 196 so that it more closely resembles Schedule 8 of the LGA – ie. shareholders have a power to comment on the draft WSS, and to require modification of an adopted WSS (based on cl 6 of Schedule 8). Alternatively, the clause 196 should confine the shareholders' role to providing comments on the draft WSS, with no power to require modifications or to approve. The Bill should state what a shareholder's powers are in relation to the WSS, rather than allowing

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	It is considered this process in relation to the WSS provides a more appropriate level of influence over the activities of a WO. On the basis that territorial authorities have the ability to influence the direction of the WO through the WSS, the far greater level of influence given to shareholders through the SOE is not required. However, clause 196(2) also allows shareholders to reserve for themselves the power to approve the final WSS. Again, this level of control over the activities of the WO is considered in appropriate. If territorial authorities shareholders wish to retain this level of control over the direction of water services they have the they have the option of not establishing a WO and remaining the WSP.	shareholders, under cl 196(2), to determine the nature of their involvement.
Water services strategy		
191	This clause covers the transitional situation where a new WO has to prepare a water services strategy. It gives flexibility for the WO and its shareholders to agree a different commencement date and duration in force than would otherwise be required. Clause 191(4) says that before a water services strategy comes into force, the existing LTP of each territorial authority shareholder continues to apply. This does not seem workable in practice given that (1) where there is more than one shareholder, the LTPs will almost certainly be different (2) individual LTPs are unlikely to align with the WO's obligations to act in the interests of all of its shareholders and its overall service area (3) more generally, it is hard to see how an LTP, which relates to a TA, can be "applied" by a WO.	Amend cl 191(4) to be more precise as to how and what aspects of an LTP can apply.
196	Clause 196(5) says that "this Act does not require a water organisation or its shareholders to consult communities or consumers on a draft water services strategy.". However, under cl 196(6) the shareholders of the WO can require it to consult on any proposals in the WSS.	Delete clauses 196(5) and (6) and replace them with a requirement for the WO to publicly consult on the draft WSS within its service area, using the special consultative procedure under the LGA 2002.

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	These provisions are opposed. A WO should be responsive and accountable to its communities not just its shareholders, and on that basis should be required to publicly consult in its draft WSS in the same way as WSP is required to consult under cl 195. Communities should not be deprived of opportunities to comment on and influence a draft WSS, just because the WSP is a WO rather than a TA.	
Water services annual budget		
201	The annual "proposed" budget must include rates set by a WSP which is a TA, and fees and charges if set by a WO. It is not clear whether this requires the particular rates and charges to be specified. Clause 201(2) says the budget may include the WO's list of charges which suggests the fees and charges referred to in s 201(1)(a)(ii) may not be the specific charges. A TA's annual plan, the equivalent of the annual budget, would not include that level of detail. As previously mentioned, WOs ought to have flexibility to change their charges or set new charges during a financial year (it is accepted that LGRA does not allow for this in the case of TAs), At present TAs can set and amend charges (which are not rates) at any time and the same should be the case for WO water services charges.	Clarify that the fees and charges referred to in cl 201(a)(ii) are not the specific fees and charges, and that a WO may set or amend fees and charges at any time.
202	This sets out the process for making a water services annual budget. Cl 202(1) says that a WSP is not required to consult on a water services annual budget. This is opposed: communities and customers who fund the activities of WSPs should have an opportunity to comment on the budget (including the charges they will be paying), just as ratepayers have the opportunity to comment on a local authority's LTP (including the rates they will be paying) under the LGA.	Amend cl 202(1) to require a WSP to consult with the public in its service area on its draft annual budget. Delete cl 202(2).

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	Cl 202(2) states that in the case of a WO, the process for preparing a water services strategy under section 196 applies, with all necessary modifications, to preparing a water services annual budget. The effect of this subclause is to allow TA shareholders of a WO to decide whether or not they wish to comment on, require amendments to, or approve a budget prepared by the WO – these being the procedural options the TAs have in relation to preparation of the WSS. It is inappropriate for the TA shareholders to retain this level of control over the activities of a WO. The WO has no autonomy to implement a WSS if, in addition, the TA shareholders retain the power to amend, or withhold approval of, the annual budget.	
Subpart 4 – Financial matters *Charges as security*		
213(1)	This provision would apply where a WO grants security over a charge or charging regime revenue as security for its borrowings. If a receiver is appointed under the security then, in addition to the rights to the charged revenue under the security agreements, the receiver would also be entitled to "assess and collect in each financial year a charge under this section to recover sufficient funds to meet" the WO's debt obligations in that year and associated administration etc costs relating to the charge. The special charge model in Section 60A has been based on the special rates model provided for in section 115 of the LGA. Neither "charge" or "charging regime revenue" (or "water services charges", which is used in subsection (4)) are defined. There is a lack of clarity as to what charges would or should be covered by this section for the purposes of setting the special	References to "charges" and "charges regime revenue" should be changed to "water services charges". A definition of "water services charges" should be included (possibly by reference to charges set under section 60), although explicitly excluding the one-off charges arising under section 60(2)(a) and (b).

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	charge, and suggests that each of these terms have different meanings when they should be the same. We suggest that "water services charges" be defined and substituted for "charges" and "charging regime revenue" so that (1) a singular term is used consistently throughout the section and (2) there is sufficient clarity as to what charges are captured by the special charge model. This could be by reference to the charges enabled under section 60 – however, this would capture the types of one-off charges described in section 60(2)(a) and (b) (being initial connection charges and IGCs). These kinds of one-off charges should not be captured by the special charge model in section 213, in the same way that development contributions are not subject to section 115 of the LGA.	
213(4)	Subsection (4) would require any such charge to be assessed as "*a uniform charge in the dollar on the water services charges payable by consumers*". This is based on section 115 of the LGA, which refers to "a uniform charge on the dollar on the rateable value of a property". However, while a rateable value of a property is a fixed value, "water services charges" will include different types of charges of variable amounts that may become payable at different periods of time. Accordingly, the subclause should clarify what water services charges the special charge will be calculated against – we suggest that it would be appropriate to specify a time period during which the relevant water services charges had to fall due in order for the additional uniform charge to apply to them (for example, the water services charges incurred and payable by a consumer in the previous 12-month period immediately before the special charge is assessed.	Section 214(4) should specify the period by which the charges are to be set, as water services are variable based on usage, rather than fixed in the way rateable value is. We suggest that it would be appropriate for the special charge to be calculated by reference to the water services charges incurred and payable during the 12-month period ending on the last day of the calendar month falling immediately before the month during which the charge is assessed.
Part 6 – Miscellaneous provisions		

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Subpart 1 – Water services bylaws		
347	This clause specifies the permitted subject matter of a water services bylaw. The clause does not, but should, cover both connection to and disconnection from a network	Amend cl 347(1)(c) to say "connecting to or disconnecting from a water supply network, a stormwater network, or a wastewater network
348	Clause 348(2) requires a WO to consult on a proposal to make, amend or revoke a water services bylaw. Clause 349(2) says a TA must consult once it receives such a proposal from a WO, but cl 349(3) then says the TA does not have to consult if satisfied that the WO consulted. Clause 349(2) and (3) should be deleted, to simplify the position and confine consultation obligations to the WO. It makes sense for the entity proposing a bylaw, amendment or revocation to be the one that consults on it. Clause 349(3)(b) as it stands is unclear, because it does not identify what "all other requirements for making" etc a bylaw are. The requirements in contemplation must be those other than consultation requirements, but the only meaningful requirements in the LGA are in s155.	Assuming cls 349(2) and (3) are deleted as we recommend, we recommend "carrying over" the requirements of s155 of the LGA. In that event, a new subclause 349(2) might read: (3) Before deciding whether make, amend or revoke a water services bylaw under subclause (1), the territorial authority must determine: a. That the proposal in respect of the water services bylaw is the most appropriate way of addressing the perceived problem; b. That any new or amended bylaw is the most appropriate form of bylaw; c. That any new or amended bylaw is not is inconsistent with the New Zealand Bill of Rights Act 1990.
350	This clause relates to delegation of the administration of a water services bylaw from the TA to a WO. It seems to proceed on an assumption that the only way for a WO to exercise these powers is for there to be a delegation. As discussed in relation to cls 156 and 163 in the case of trade waste bylaws, it will be possible for the bylaw to confer the necessary "administrative" powers directly on	It should be made clear that cl 350 does not preclude a bylaw conferring relevant powers directly on the WO.

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	the WO without them having to be delegated. It makes little sense anyway for the WO to be exercising powers on behalf of the TA when the decisions relate to the WO's own network and services and not the TA's. Further, the TA may not wish to be the legally responsible entity (delegation does not transfer liability) in those circumstances. Delegation may still be needed for the TA's existing water services bylaws, until new bylaws are made.	
351	This requires a TA to carry out a review of its water services bylaws within 2 years of the section coming into force. The provision is presumably intended to apply only to existing bylaws and not any new ones made under the Bill, but it does not say that.	Exclude form the ambit of cl 351 any bylaws made after the commencement of the Bill. Extend timeframe for review of bylaws to 3 years.
Schedules		
Schedule 1, cl 8	Council-controlled organisations (such as Watercare) that currently provide water services – and will continue to do so after the Bill is enacted – will automatically become water organisations, upon enactment. This means they will be subject to the new Act, and the responsibilities that apply to other water service providers. Where a CCO becomes a water organisation and does not already meet the statutory requirements that apply to water organisations, it has six months following enactment to make the changes needed (or for territorial authority shareholders to obtain an exemption, if relevant). Similarly, a territorial authority that is a shareholder in a CCO that becomes a water organisation has six months in which to provide a transfer agreement, to formalise the responsibilities and other matters held by the organisation and the authority. The definition of CCO in the Local Government Act 2002 is amended by the Bill to include a reference to water organisations. A water organisation is also a CCO if it is owned by one or more local authorities, and they are the majority shareholders (with trustees in a consumer trust being the minority).	As written, this would mean that WWL becomes a water organisation in December 2025, and the councils would have from August (when WSDP is adopted by councils) to December to do most of the establishment work incorporated in the transfer agreement. Six months isn't long enough for this process, particularly when we have six shareholders and one has indicated that they are working on a different model and timetable than the other five. Twelve months might be workable, and aligns with the regional WSDP intent to have a new organisation in place by July 2026.

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		There is allowance for an exemption but no indication of how that would be considered or on what criteria.
Schedule 2, cl 7	Decision making for revenue and charging under Sch 2, cl 7 should be the responsibility of the WO's Board, not the territorial authority. See our earlier comments recommending deletion of cl 202(2) which would allow for TA shareholder approval of a WO's annual budget. As worded, this clause would allow TAs to prevent WOs setting the charges they need to cover the costs of providing their services.	Clause 7 should be amended as follows: ~~A transfer agreement must specify whether the territorial authority or~~ The board of the water organisation will be responsible for making final decisions about the following matters: (a) the water organisation's capital expenditure and operating expenditure for the water services it provides: (b) the water organisation's level of charges and revenue recovery for the water services.
Schedule 3, cl 2	Clause 2 sets out the "strategic matters" that must be included in a WSS. Under cl 2(1)(b), this includes the objectives and expectations that apply to the water service provider, including the objectives specified in section 15; and in the case of a WO, any objectives or expectations specified in the organisation's SOE. There is no value in a WSS simply repeating the statutory objectives in cl 15 of the Bill. The reference to the WSS including objectives set out in the SOE is premised on the SOE being a direction-setting document in which objectives are set out, as opposed to a more limited document akin to a SOE under s64B of the LGA. For the reasons set out above, this is inappropriate. Rather than the WSS simply repeating objectives that are set elsewhere, it should be the document that sets out any objectives or priorities of the WO to supplement the statutory objectives set out in cl 15. The shareholders have the opportunity to	Amend cl 2(1)(b) as follows: (b) ~~the~~ any objectives ~~and expectations that apply to~~ of the water service provider additional to the ~~, including —~~ ~~(i)~~ the objectives specified in **section 15.**~~; and~~ ~~(ii) in the case of a water organisation, any objectives or expectations specified in the organisation's statement of expectations:~~

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	influence those objectives or priorities through the opportunity to comment on the draft WSS.	
Schedule 6 **New Schedule 7 inserted into Commerce Act 1986**		
Part 1 Ring-fencing of revenue	A new regulatory power is given to the Commission under the Bill. The intention is to ensure water service providers are using revenue generated from provision of water services for the continued provision of water services (including on maintenance, improvements, and providing for growth). Water service providers are not prevented from cross-subsidisation, but the Commission may make a determination that a portion of revenue is used for a particular purpose. The ring-fencing provisions also do not prevent water service providers from making a profit or paying dividends to shareholders: clause 3(7). We disagree with this provision. It is inconsistent with the Government's expressed policy positions on ring-fencing (including the August 2024 announcements), and with cl 16(1) of the Bill which states that one of the financial principles that WSP must act in accordance with is: (a) the provider must spend the revenue it receives from providing water services on providing water services (including on maintenance, improvements, and providing for growth). In general terms, there is underinvestment in water services infrastructure in New Zealand. Customer revenue should be invested into the operations of the WO rather than returned to shareholders. Also, customers will often have little choice but to pay water service charges. Territorial authority shareholders have their own tools	Replace clause 3(7) with a statement that a nothing in this clause authorises a WO to make a profit or return a dividend to its shareholders.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	for funding the services they provide, and their activities should not be funded by a WO. We note that Watercare is currently prevented from returning a dividend to Auckland Council under s57 of the Local Government (Auckland Council) Act 2009.	
Other matters		
Wellington Regional Water Board Act 1972	This Act sets up the framework for Greater Wellington Regional Council's (GW) bulk water function and many other water-related rights and obligations. In addition, there is also a Wellington Regional Council (Water Board Functions) Act 2005 that provides for GW to have the right to install renewable energy infrastructure on land that was previously owned by the now disestablished Wellington Water Board and subsequently vested in GW.	Both of the above Acts need to be reviewed to ensure that any powers required by the new entity are transferred to it to enable it to take over the bulk water function. The above Acts should then be considered for amendment or repeal provided, however, that GW retains all land vested in it by the previous Wellington Water Board and the right to appropriately deal with that land. In the meantime, the Councils agree that these two Acts should not be amended or repealed by the Bill.