WATER SERVICES LEGISLATION BILL AND WATER SERVICES ECONOMIC EFFICIENCY AND CONSUMER PROTECTION BILL SUBMISSION // OUTLINE

Background

The Government introduced the Water Services Legislation Bill (WSL Bill) and the Water Services Economic Efficiency and Consumer Protection Bill (Economic Regulation Bill) on 8 December 2022. These two bills build on the Water Services Entities Act, which became law on 14 December 2022. They set out the technical detail of three waters infrastructure and service delivery:

- The WSL Bill sets out the Water Services Entities' functions, powers, obligations, and oversight arrangements.
- The Economic Regulation Bill regulates the price and quality of water infrastructure services and protects consumers.

Both bills had their first reading on 13 December 2022 and were referred to the Finance and Expenditure Committee, which has set a deadline of 17 February 2023 for written submissions from local government (although on 21 December it wrote to councils saying requests for extensions may be considered). LGNZ recognises that this timeframe is very difficult for councils. It coincides with the holiday break and councils preparing to submit on the Resource Management Bills and Future for Local Government Review. We have repeatedly raised our concerns around these timeframes with the Government.[1]

Our key points

Water Services Legislation Bill

- The council-WSE relationship will be critical for both parties. It needs to put communities first and enable (rather than compromise) the ongoing role and functions of councils. While WSEs are expected to 'partner and engage' with councils, what this means in practice must be clarified.

[1] Councils are able now to request an extension to the RM bills submission deadline to 19 February (contact the Environment Select Committee). The deadline for feedback on the Future for Local Government draft report feedback is 28 February.

- We are unhappy with provisions that are different from what the Rural Supplies Working Group envisaged. Our view remains that there should be an opt-out option available to communities that can demonstrate that they satisfy the 'transfer requirements'.
- We are concerned about the provisions relating to councils collecting water charges on behalf of WSEs until 2029. Councils oppose being compelled to collect revenue for a service they will no longer control and deliver, partly because of the potential public confusion this will generate about who is accountable.
- There are number of provisions that need clarifying or amending to ensure councils do not attract unfunded mandates under the new system or are not financially disadvantaged.
- We are concerned about the process for determining councils' three waters debts.
- The addition of provisions on subsidiaries based on the CCO provisions of the Local Government Act 2002 is a material change that we do not support.
- We have concerns around who will 'wear the liability' when things go wrong, and what legal remedies will (and should) be available.

Water Services Economic Efficiency and Consumer Protection Bill

- The Bill views the water services sector as similar to existing monopolised utility industries, which we think is the wrong approach. For example, the Bill includes an explicit reference to limiting WSEs' ability to "extract excessive profits". This language is inflammatory, inaccurate and unnecessary given the proposed public ownership model
- We think the information disclosure elements of the Economic Regulation Bill can deliver on most of the regulatory policy outcomes the Government has targeted for improvement, and should be the primary initial focus of the regime.
- Introducing quality regulation in the first regulatory period is an unrealistic target.
- Price-quality regulation should similarly be delayed and made subject to a further recommendation by the Minister. We are concerned about the potential impact price-quality regulation could have on the short/medium term debt capacity of the new water services entities.

The purpose of this outline

This outline has two purposes:

1. To help you prepare your own submissions. The outline flags issues that we think all councils will be concerned with and potentially want to submit on.
2. We really want your feedback to shape our actual submission. Depending on your feedback, our submission could look quite different from the outline we're sharing below.

The outline is structured in two parts – one covering each Bill – followed by a glossary and questions for feedback.

How we'll develop LGNZ submissions on the two Bills

This **outline** sets out where we intend to focus our submissions and the key points we plan to make. Please let us know what you think. There is a list of questions we especially welcome your feedback on at the end of this document.

The deadline for feedback on the outline is **Friday 27 January** – please email your views to submission@lgnz.co.nz

During January, we'll be developing our **draft submission**. Subject to feedback, this will largely replicate and build on the submission outline, and add suggestions about how to improve the drafting of legislative clauses.

We are planning to share that draft with you on 10 February. We will have a very short window of feedback on that draft, given the Select Committee deadline for council written submissions of Friday 17 February.

Water Services Legislation Bill

Topic	Response
General relationship between councils and WSEs	• The council-WSE relationship will be a critical one for both parties. It needs to be set up in a way that will enable (rather than compromise) the ongoing role and functions of councils. • However, the WSL Bill tends to treat councils as just another stakeholder group for a WSE to engage with, while implying that the WSE acts as an independent self-sufficient organisation. This 'us and them' approach has the potential to be at the expense of a more joined up focus on local communities' needs. • The legislation also needs to reflect that WSEs will operate within a broader system that services communities, with councils remaining central to that overall picture as well as being democratically accountable. Communities should expect both service organisations to work hand in glove for their benefit. While the WSL Bill signals the need and opportunity for operational/planning integration and partnering, it does little to actually direct or mandate it. • However, there is an alternative view that if this reform progresses as proposed, councils will lose control over their assets and lose their three waters knowledge base. This should mean that councils don't retain any responsibility for water service delivery, including issuing invoices. • Existing relationships, experience and capabilities of councils will need to be respected and leveraged if the overall system is to operate well at a local level. And expectations on councils, particularly during the transition

	and establishment phase, need to be carefully managed and take account of the fact that councils will lose their three waters capability and capacity when staff transition to the new WSEs.
Functions of Water Services Entities	• The WSL Bill will give WSEs a number of new 'functions' (in addition to those included in the WSE Act 2022). We support the specific requirement to 'partner and engage' with councils. • However, it's unclear what 'partner and engage' with councils will actually mean in practice, including how it will connect with councils' placemaking and community wellbeing functions. No expectations are set and no guidance is provided (*see also 'relationship agreements' below*). • The obligation to 'partner and engage' should not amount to an expectation that councils will be involved in three waters service delivery if the reform proceeds as proposed and councils lose control of three waters assets.
Absent alignment of 'purpose' between councils and WSEs	• We are concerned that the lack of shared 'purpose' between councils and WSEs will create tension. Under the Local Government Act 2002 (LGA), councils are required to promote the social, economic, environmental and cultural wellbeing of communities both now and in the future. WSEs do not share this purpose. This lack of clear alignment could create tension and favour the 'plan implementer' (WSEs) over the 'plan maker' (councils). • We think the WSL Bill should expressly recognise that councils' ability to influence three waters services is limited to the tools available under the new legislation. Councils should not be accountable or responsible for three waters outcomes or other outcomes that depend on WSE decisions, which may not align (in substance or timing) with a council's broader planning frameworks. • What happens if a council ends up in conflict with a WSE because the council's view of 'community needs' is at odds with what the WSE can justify or afford from a (wider service area) financial sustainability perspective? This needs to be clarified. • What happens if a WSE limits or stops the provision of services to an area because it assesses that climate change or natural hazard risks mean a higher level of investment is uneconomic? This could be the case if the cost of repair exceeds available financial resources when weighed against competing priorities. And what happens if the WSE's actions don't align with a council's broader plans to build resilience to or respond to climate change/natural hazard risks in a certain area? This needs to be clarified. • A WSE must pursue statutory objectives focused on efficiency, financial sustainability, and best commercial practice. There is potential for misalignment between these drivers and councils' broader focus that encompasses placemaking and community wellbeing. But in resolving this tension, councils will potentially be limited to escalating issues to the RRG

	and providing input on relevant planning/policy documents (unless resolution is included in a 'relationship agreement' – see discussion below).
Political accountability	• In reality, councils (and their elected members) will attract a level of political responsibility for the three waters system. They remain obligated to look out for community interests. Their communities will assume a council still has sway and a voice. This assumption could be expressed at the ballot box, even if an individual council and its councillors (including those on a RRG) have limited control over actual service delivery. • We think the LGA should expressly recognise that a council's ability to achieve some aspects of its 'purpose' will be heavily dependent on WSE decisions – over which it has limited or no control. As such, the duties of a council should expressly reflect those limits. • Given an element of political accountability is inescapable, we think the model should be changed in one or more of the following ways: a. Councils be given a louder voice that WSEs must listen to on key topics (for example, around place-making and 'master planning'). This would mean a council can set some of the operating parameters that a WSE must respond to, consistent with its duties and objectives); b. Subject to a suitable threshold, councils be expressly empowered to challenge (and seek reconsideration) of WSE decisions that the council reasonably considers will negatively impact the delivery of a key element of an approved Long Term Plan. (As Resource Management Reform beds in, this would extend to an approved regional spatial strategy.)
Relationship agreements	• We think agreements with individual councils (as opposed to agreements with multiple councils) are the best way to ensure individual council needs are met. However, we think some elements of these relationship agreements should be 'standard form'. This would ensure that all councils/WSEs benefit from a best-practice approach to matters they all share in common. It would also help develop consistency and reduce the need to 'learn' and apply bespoke arrangements. • It is unclear what 'status' a relationship agreement will have, and what 'binding effect' it will have. If such an agreement will not be legally enforceable, then the Bill should do more to frame up the context of the special role and nature of the relationship agreement between a WSE and a council. This could mean, for example, an express expectation of joint care and stewardship for all the systems impacted by their respective actions for the benefit of local communities. It could mean finding synergies that leverage and enable each organisation to succeed and avoid duplication of resource and cost. There should be an express statutory basis and mandate for this – which could be analogous to the need for a

	WSE to address Te Mana o te Wai and respond to statements by mana whenua. • Relationship agreements should be used to provide for the interface between three waters and council planning systems. In time, relationship agreements should be established with the regional planning committees that will be established through RM reforms. • There are suggestions throughout the Bill that the scope for engagement is limited to the operation of stormwater, land drainage, or related services (cl 468(1)(c)(iii)). This is too narrow. There are multiple touchpoints for the WSE/council relationship, all of which need to be identified and managed. This would also provide an opportunity for process synergies. For example, consulting communities once on the full range of things each cares about, to lower cost, create efficiency and further develop expertise. • Relationship agreements with regional councils should be more limited given that they will continue to play a regulatory role. • We think some of the planning interface arrangements used in the Scottish Water model could be adopted in water services legislation, for example: a. WSEs should contribute to the writing of 'main issues reports' (which are front-runners to local development plans); b. WSEs should contribute to the writing of any proposed local development plans; c. WSEs should contribute to the writing of an 'action programme', which supports delivery of local development plans; and d. WSEs should comment on all outlines or full planning applications referred to by local authorities.
Purpose and content of the Government Policy Statement	• The areas of influence under the Government Policy Statement have been expanded to include statements in relation to geographic averaging, redressing inequities in servicing of Māori and redressing historic service inequities. • Consistent with our previous recommendations, we see this as adding to an unfunded mandate for local government. If central government is to have influence and control like this, it needs to go hand-in-hand with a commitment to funding. Otherwise some local priorities may need to be sacrificed to deliver on central government priorities.
Rural supplies	• Local government-owned mixed-use rural water supplies that provide both drinking water (to 1000 or fewer non-farmland dwellings) and water for farming-related purposes (where 85% or more of the water supplied goes to agriculture/horticulture) will transfer to the WSEs. These supplies can subsequently be transferred to an alternative operator (for example, the local community served by the supply). However, these transfer provisions are different from the recommendation of the Rural Supplies Working Group, which promoted a regime where the local/affected community could 'opt out' from the initial transfer.

	• The process required to subsequently transfer the service to an alternative operator is too high a bar. Our view remains that there should be an opt-out option available to communities that can demonstrate that they satisfy the 'transfer requirements'.
Charging provisions – collecting charges	**Councils collecting charges:** • We are concerned about the provisions relating to councils collecting water charges on behalf of WSEs. Councils oppose being compelled to collect revenue for a service they will no longer control and deliver, partly because of the potential public confusion this will generate about who is accountable. • The bill says that a WSE will be able to insist that a council collects charges on its behalf (in exchange for a 'reasonable payment for providing the service') until 1 July 2029. To facilitate this, a WSE will enter into a 'charges collection agreement' with the council. But if a charging agreement is not agreed upon, the Minister has power to impose terms. • While our preference is that councils aren't responsible for collecting charges, if it is not practical for WSEs to stand up their own billing/collection systems on 1 July 2024, then in our view any interim arrangement should be supported by agreed principles and limits to protect councils' interests. The WSE will need to carry the risk of council resources and systems not being able to do what the WSE might want. • The provisions in the WSL Bill are based on those in the Infrastructure Funding and Financing Act 2020 (IFF) for collecting IFF levies. However, these circumstances are very different. There are range of other matters that need to be recognised: a. The WSL Bill contains a diverse range of charges. Are councils expected to invoice and collect them all, as and when requested by the WSE? Requiring councils to collect a diverse range of charges would have implications for existing processes/IT systems. This would create additional costs for councils. The full cost of any enhancements will need to covered by the WSE. b. Alternatively, it should be very clear that each council will only do what its current systems are capable of doing, which may fall short of what the WSEs want. Three waters billing will not be councils' core business nor a priority in term of the performance of their continuing functions. c. If a WSE utilises the IFF itself, would it be appropriate for councils to collect those levies (given that the council is not the proposer of the project which the levy will support)? d. Councils will need to be fully insulated from any risk associated with this function and not liable for failures if they exercise reasonable endeavours. e. Councils will be entitled to favour their own requirements. Unless separate payments are made (for example, payers are asked to pay the

amount invoiced on behalf of the WSE direct to a WSE bank account), then receipts and prepayments received into a council account should first be applied to council rates (i.e. the WSE will wear the risk of any shortfall).

f. The Bill should specifically address (and insulate councils from) compliance risk associated with Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and responsibility for accounting for GST.

Geographic averaging:

- According to the Bill, a WSE board may charge geographically averaged water prices for different service types and consumer groups (clause 334). The explanatory note to the Bill presents averaging as a tool for protecting vulnerable consumers by helping to smooth prices and share costs – so that consumers in similar circumstances across the WSE service area pay the same price for an equivalent service.
- The Bill does not direct how, when or where geographically averaged prices should be applied by the WSEs. Instead it leaves this up to a WSE board, which will need to act consistently with the general charging principles (clause 331), including Commerce Commission input methodologies and determinations (which will not be in place on 1 July 2024).
- The transitional provisions contemplate a WSE carrying forward existing tariff or charging structures until (as late as) 30 June 2027.
- A core pricing principle (which, if not brought forward by regulations, will apply from 1 July 2027) is that charges should 'reflect the costs of service provision'. Given the way the principle has been expressed, and then qualified, it suggests a starting point of standardised user pricing by reference to the WSE's total cost base. The Bill says that charging a group of consumers differently may only occur if the group receives a different level (or type) of service, or the cost of providing the service to that group is different. But even then, a WSE board may decide not to apply a 'costs should lie where they fall' approach (including in order to remedy prior inequities in the provision of services), or the WSE CE may discount charges that would otherwise apply.
- Geographic price averaging of residential water supply/wastewater services is a sensitive issue – as is addressing historic service inequities. This has been recognised by their inclusion as additional topics that can be addressed in the GPS.
- Councils have expressed concern that geographic averaging of water services charges may create new inequities. For example, should residential consumers in a metropolitan area (who benefit from the cost efficiencies that come from operating at scale in a defined location) share in the (naturally) higher costs involved in delivering a similar level of service to a rural and provincial residential consumers? This issue becomes

	even more complex where there are strongly held views about the level and quality of previous investment in the water services assets. Conversely, using metro areas' scale to subsidise costs for smaller, rural areas was understood by a number of councils to be an underlying principle of Three Waters Reform. There is a view that the Bill does not go far enough to enshrine this, leaving a lot of decision-making responsibility to the Commerce Commission and the WSE boards. If standardised pricing (for the same level of service) isn't enshrined in legislation, some councils will feel misled by the dashboards provided by the Government, which gave every council within a proposed entity the same cost per household for three waters post-reform. • Individual councils will need to assess how this might apply to them and their communities, after a WSE has indicated how it might be applied in practice. An RRG should have to endorse or mandate this policy before it can be implemented (especially if the funding and pricing policy that allows it only provides high-level guidance). • Supporting cabinet papers released by the Minister indicate that moving to harmonised prices will inevitably take several years, to smooth the impact of changes on individual customers and avoid price shocks. **Water infrastructure contribution charges:** • WSEs will have the power to set water infrastructure contribution charges. These can be used if new development or increased commercial demand mean the WSE must provide additional or new water services assets. • Under clause 348, the Crown is exempt from paying water infrastructure contribution charges. This is a concern, as Crown agencies are often major developers and can exacerbate issues that are the responsibility of the WSE (or local council). Such an exemption should be something that the Crown applies for and needs to justify. This application should reference the benefits derived for a particular community from such a Crown project – and those benefits need to be sufficient to justify the associated water services-related costs that will be borne by all consumers across the WSE service area.
Combined cost to ratepayers	• The reform assumes that, all other things being equal, the combined costs of water bills and rates bills should not change when the water services entities stand up. We have some concerns with this view. Although this outcome may be forced in the short term, there will be a point of material adjustment down the track, for the reasons discussed below. • To date, councils have taken a long-term, portfolio view of their finances and activities. At times, this has been for political reasons. Taking this approach means there may be current levels of under-rating or cross-subsidising. Without three waters services, councils may need to increase their general rates to cover the real costs associated with their remaining functions.

	• It is unclear whether DIA has a plan to address situations where council rates do not drop by an amount equal to what the WSE is charging for water services. This needs to be addressed.
Rating WSE assets	• WSEs will not pay rates on pipes through land they do not own, nor on assets located on land they do not own. However, other utilities (such as electricity line companies and telecommunications companies) contribute their share of rates related to land and assets they benefit from. • Whether water services entities should be approached in the same way as other utilities depends on the nature of the relationship between councils and their WSE. A partnering relationship of an overall system for the benefit of local communities is quite a different scenario from the relationship that exists between councils and existing utility providers. • However, if councils will be active collaborators with their WSE in performing their respective roles in the most cost- and process- efficient way, then councils need to be funded to do that. Collecting a share of rates from WSEs is one way of creating a revenue source to fund that. Alternatively, councils will require some other source of funding.
Stormwater	• Our points made in response to the Water Services Entities Bill around a phased transition are still relevant and of concern. Our core position is that there is significant complexity associated with urban stormwater networks transferring to the WSE but not the 'transport stormwater system' or those aspects which are mixed use. • A council must agree that network rules created by the WSE (for its stormwater system) will also apply to council systems. Taumata Arowai will be responsible for setting environmental performance standards for stormwater networks. **Management plans:** • WSEs will be required to produce 'stormwater management plans'. When producing these plans, the WSE must engage with councils. According to the Bill, councils *must* work with the WSE to develop the plan. But clarification is needed around how WSEs and councils will work together to develop and implement these plans. • The operational interface and touchpoints will be many and varied. These need to be carefully managed as each council and its WSE find their feet and set up channels of communication and processes to support their ongoing engagement and legal compliance obligations. **Charges:** • A WSE may charge a council for stormwater services between 1 July 2024 and 1 July 2027 if the WSE is not charging system users directly. WSEs cannot charge directly until the earlier of 1 July 2027 and when the Commission has put in place input methodologies for determining the total

	recoverable cost of delivering stormwater services (cl 63 of Schedule 1 – new Part 2 of Schedule 1 of WSE Act 2022). But how will councils pay any stormwater services charges if they are not allowed to rate or charge for water services?
Interface with councils' roles and functions	**Carrying out works:** • WSEs will have the power to construct or place water infrastructure on or under land owned by councils. The WSE only needs to provide 15 days' notice where it intends to carry out work. We question how this will work cohesively with council processes, and whether the 15-day notice period is sufficient warning for councils. **Sharing rating information:** • The Act will require local authorities to share rating information kept and maintained under the Local Government (Rating) Act 2002. • Not only do councils need to be compensated for the work required to share this information: a. they need to be insulated from any risk associated with complying with a WSE request (cl 319(2)) that is beyond what the WSE is entitled to ask for; and b. their obligation needs to be subject to what their existing systems are capable of producing (with the resources councils have available, recognising that this will not be their core business nor a priority in terms of the performance of their continuing functions).
Councils' three waters debt	• We are concerned about the process for determining councils' three waters debts. The Bill says the assessment of the total debt amount will be made by the DIA Chief Executive. There is no recourse to the Minister if there is a disagreement on the amount. The council only gets a chance to agree date and manner of payment (not amount). We believe this needs to be viewed in conjunction with the 'no worse off' commitments made by Ministers under the Heads of Agreement between the Crown and LGNZ (these are referenced in cl26A of sched 1 Part 1, subpart 6 of WSE Act). • The Bill anticipates scenarios where councils may keep holding (some portion of) this debt for a period of up to five years. This may be to accommodate instalment payments over time to match the existing debt repayment profile. But more detail is required from DIA about what is actually contemplated here.
WSE financial reporting	• Should there be an extension/equivalent to the Local Government (Financial Reporting and Prudence) Regulations 2014 for the WSEs?

WSE subsidiaries	• The addition of provisions based on the CCO provisions of the Local Government Act 2002 is a materially different from existing understandings of what Three Waters Reform would look like. This introduces flexibility but creates a whole new layer of operational activity below the board that is even more 'removed' from RRG oversight. The careful disciplines that are wrapped around the WSE board do not flow down and into the subsidiaries. • Contemplating 'listed subsidiaries', a 'subsidiary of a subsidiary' and operating for profit all seems wholly out of place with the policy settings originally promoted by the Government. We are very concerned about these new details of the reform. • Any proposal to establish a subsidiary should be regulated by the WSE constitution and be subject to a process that involves the RRG. This process needs to take into account the rationale and purpose (and the risks and mitigations) involved in devolving matters from the direct control of the WSE board appointed by the RRG. • Even though significant water assets must remain with the WSE, it is expressly contemplated in the Bill that such a subsidiary may be formed by more than one WSE (possibly with other investors) to undertake borrowing or manage financial risks that involve a risk of loss, which the WSE may guarantee, indemnify or grant security for. • More detail is required from DIA about what is actually under contemplation here.
Application of transfer provisions to CCOs	• A number of issues have arisen with respect to the application of asset/staff transfer provisions to CCOs. These issues are addressed in further detail in **DRAFT** advice from Chapman Tripp (contained in Appendix 1 below). We will expand on this further in our submission.
Legal claims and liability	• We have concerns around who will 'wear the liability' when things go wrong, and what legal remedies will (and should) be available. For example: a. What happens if water controlled by a WSE damages council assets? b. What will the consequences be if a council or WSE fails to act consistently with the terms of their relationship agreement? Should the non-defaulting party be granted statutory relief if this situation results in them failing to comply with a requirement? c. Will councils or landowners be able to bring judicial review proceedings against WSE decisions on policies/plans that adversely impact the value of their property or other aspects of their economic interests? d. Will councils continue to be liable for past breaches and failures relating to water infrastructure, which they may not now be able to fund?

	• These matters need to be clarified.
General comments	• Most of the detail around asset/contract transfers, and establishing the WSEs, has been adopted from previous statutory reorganisations. Generally, we think councils would benefit from: a. Receiving some assurance from the Government that the lessons learned from those earlier reorganisations have been reflected in this legislation (i.e. that a 'best of breed' approach to reorganisation is being taken); and b. Being provided with a guide to the legislation that clearly identifies the points of difference from current LGA positions (to assist councils with understanding and planning for the change management involved with implementing the reforms). • We think it would be beneficial to clearly map out the LGA content pre- and post-impact of this Bill, taken together with the WSE Act 2022 (this should include what stays, goes, changes and where there is a clear need to manage an interface between council and water services entities' powers). • Any engagement taking place between councils and DIA/NTU before 1 July 2024 will count as engagement or consultation for the purposes of the legislation. This should be qualified by the need for DIA/NTU to clearly identify and communicate when particular contact and content counts and for what particular purpose. This cannot be asserted after the event. Councils need to know when to bring their issues/concerns to the table with DIA/NTU.
Other points	**Public Works Act:** • We think any council land transferred to a WSE that becomes 'surplus' should be returned to the original council owner, so it can be made available for alternative community use or sold and the proceeds made available for use in the particular local community. It should not be retained nor sold by the WSE for its own purposes or benefit. **Treaty/mana whenua arrangements:** • We think arrangements between mana whenua, councils and WSE should become tripartite agreements, where the entity and council need to work together to ensure mana whenua can easily engage with them both. Mana whenua should not have to manage two separate relationships if they choose not to. **Councils as a road controlling authorities:** • The Bill says that if a council needs to move three waters assets to carry out other functions, it has to pay. The same applies to the WSEs in reverse. We think WSEs and councils should collaborate to reduce costs where

	either party has to undertake activities that interfere with the other's assets. • Currently, councils can create efficiencies, as they own both sets of assets. We want to ensure these cost savings are not lost by a separation of functions.

Water Services Economic Efficiency and Consumer Protection Bill

Topic	Response
Problem definition	• We do not think the Economic Regulation Bill approaches the core 'problem definition' from the right perspective. • The Bill views the water services sector as similar to existing monopolised utility industries. In particular, the Bill aims to limit WSEs' ability to 'extract excessive profits'. We think this language is inflammatory, inaccurate and unnecessary given the proposed public ownership model. • The policy work supporting the Bill suggests the focus of economic regulation should be: a. quality information to support robust asset management; b. efficiency; and c. transparency and accountability for expenditure and investment. • In our view, information disclosure should be the primary focus (at least in the first instance).
Information disclosure	• The information disclosure elements of the Economic Regulation Bill can deliver on most of the regulatory policy outcomes the Government has targeted for improvement. In particular, information disclosure is likely to deliver accountability, transparency and efficiency, and support development of asset management systems and processes. • However, the Government should provide the Commerce Commission with a clear (and focused) direction on the problem definition, which would then inform key elements that need to be covered in information disclosure. This would ensure information disclosure does not end up being overly prescriptive or onerous relative to the Government's objectives. • It appears the Government wants to increase information/transparency around assets held by the WSEs (and their condition), expenditure and revenue/charging. We question whether this is already provided for in the Water Services Entities Act (and the WSL Bill), and whether there is any additional value to be obtained from adding a costly resource- and

	expertise- intensive regulatory reporting and compliance regime into the mix. • The initial 'information disclosure step' (in combination with the other proposed elements of the three waters model) will deliver substantially all of the benefits offered by economic regulation, and solve the most obvious and pressing issues at the centre of the problem definition. • If *just* this information disclosure element was adopted (at least initially), the simplified approach would provide clarity in the early stages of reform. It would be simple to explain and understand, and would: a. Avoid creating a medium/long term source of regulatory risk on day one that is impossible to accurately predict and factor in at a time when key WSE systems (including funding arrangements and long term planning) need to be put in place. b. Ensure councils (and communities) are not required to accept a delivery model with a key element still undecided. By creating clarity at the start of reform, councils would be able to give their communities a clear, simple outline of what to expect. Alternatively, adopting an incomplete regulatory regime will mean New Zealand's communities are committing to potentially negative future outcomes, without an ability to turn back. • Not focusing on information disclosure alone and asking stakeholders to embrace a high trust/high hope approach to a central component of the reform will only heighten existing scepticism around (and potentially opposition to) the proposed reform.
Quality regulation	• Introducing quality regulation in the first regulatory period is an unrealistic target. • Quality regulation applies to other utilities. However, quality regulation requires: a. A clear (and quantified) long-run view of current quality performance across the whole asset base (i.e. a baseline); b. Information on the level of service quality consumers support, and are prepared to pay for; and c. An understanding of what level of quality performance is realistically achievable in the future, on what timeframe and at what cost. • This is particularly important given failure to comply with quality standards exposes both the WSE and individual directors and officers to civil and criminal liability. • Other sectors (e.g. electricity or telecommunications) implemented their quality regulations with an existing historic data set of network performance, which provided a clear baseline and supported a forecast of achievable future performance. Outside of the main metros, we doubt this would be the case for three waters. • The first regulatory period should instead be dedicated to information gathering to support future quality regulation (including engaging with

	communities to understand what they will need from the service). Quality regulation should be introduced, at the earliest, in the second regulatory period, not the first, and utilise information obtained through information disclosure in the first regulatory period. • Information disclosure is likely to achieve most of the aims of economic regulation. Rather than an option to defer (which is the current approach), imposition of quality regulation should be conditional on the Minister making a recommendation on the advice of the Commerce Commission. • The performance requirements that the Commerce Commission may regulate are also unprecedented and unduly intrusive. They would allow the Commission to substitute its own view for the engineering judgement of the WSE. This goes well beyond the incentives-based regulation that has traditionally (and effectively) applied in New Zealand. Not only is the Commission not well placed to carry out this role, but it would compromise the ability of the board to discharge its duties. • The relationship between quality regulation and service quality codes under Part 3 also needs to be clarified.
Price-quality regulation	• Price-quality regulation should similarly be delayed and made subject to a further recommendation by the Minister. • Price-quality regulation is an extremely costly and complex form of regulation. It is not realistic to roll out price-quality regulation just three years into the new regime. It is also likely to represent a disproportionate regulatory burden in light of the gains that can be made with information disclosure alone. • Price-quality regulation aims to address excessive profits and increase efficiency. As we outlined above, excessive profit taking is not an issue in the three waters sector. Efficiency would be addressed through the information disclosure regulation. We think the information disclosure component should be given a chance to do its work, before we move to a more complex, onerous, and costly form of regulation. • Information disclosure has been effective in other sectors. For example, airports are regulated with information disclosure only, and it has been effective in driving efficiency. It doubles as a 'soft' from of price control, because financial returns can be exposed to scrutiny. • Similar to quality regulation, price-quality regulation is more effective with better data. If price-quality regulation becomes necessary down the track, the regulator would be better placed to implement it with two or more regulatory periods of data.
Debt capacity and financial concerns	• We are concerned about the potential impact this regulation could have on the short/medium term debt capacity of the new water services entities. • In particular, we are unsure of the impact this regulation would have on WSEs' ability to meet their share of the 'better off' funding commitment to councils without using the debt needed to meet three waters compliance

	costs (including regulation) and their existing/expected future investment requirements. • If WSEs could *not* fund their mandatory commitments, we think the Crown should fund an interim solution and only look to recover that cost (for example, by transitioning the debt to the WSEs) when the WSEs can handle it without compromising their operations. • We also think WSEs should only make financial support package payments out of 'excess' borrowing capacity, and so long as that debt burden does not result in a materially increased cost to consumers. • If the economic pricing and transitional arrangements create 'abnormal financial circumstances' for the WSEs, we think the Government should provide additional financial support to the entities in order to bridge the gap between: a. The 'known realities' the entities will face during the transition phase; and b. The financial position the modelling *assumes* the entities will be in to operate as intended and start delivering on the benefits intended to accrue from the new model. • This may mean the Government will need to make a short-term compromise on one or more of its policy bottom lines during this initial period of fragility.
Te Mana o te Wai and Te Tiriti obligations	• We would like to get a better sense of how the Commission will account for the WSEs' obligations under Te Tiriti, Te Mana o te Wai, and Treaty settlements. How will these aspects be reconciled with the Commission's well-established economic/input data-based approaches for regulating other utilities? Taumata Arowai is better placed to address these matters. The Commission should have regard to Taumata Arowai's position on these matters.

Glossary

Economic Regulation Bill – Water Services Economic Efficiency and Consumer Protection Bill

IFF – Infrastructure Funding and Financing Act 2020

LGA – Local Government Act 2002

RM – resource management

WSE – Water Services Entity

WSL Bill – Water Services Legislation Bill

Questions for feedback

We welcome your feedback on anything in the above outline or the legislation as introduced. We would particularly appreciate answers to the following questions:

1. Is there anything that we've missed from our submission outline that you'd like to see included?
2. Is there anything we've included that you don't agree with or think we should change?

APPENDIX 1: EXPLANATORY NOTE – COUNCIL CONTROLLED SERVICE COMPANIES

chapman tripp

Memorandum

Date: 21 December 2022

To: Local Government New Zealand

For Your: Information

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THREE WATERS REFORM | COUNCIL CONTROLLED SERVICE COMPANIES

Background

1 The NTU has recently communicated with a number of councils about the application of the asset/staff transfer provisions of the Water Services Entities Act 2022 (**WSEA**) to council controlled organisations (**CCOs**) involved in water service delivery.

2 The WSEA, including as it will be amended by the recently introduced Water Services Legislation Bill (**WSLB**), provides a high level framework for the identification and transfer of CCO water services related assets, liabilities, contracts and staff. The actual impacts will not be a 'one size fits all' thing. The impact will depend on the specific circumstances and operations of the CCO.

3 It will also depend on where the WSE establishment chief executive, DIA/NTU and the Minister (on advice from DIA and other officials) draw the line when applying the principles in the WSEA to determine what is 'in' for transfer purposes and what is 'out'.

4 Where that line is drawn will be determined by:

4.1 the words in the WSEA (as such, there is an opportunity through the select committee submission process for the WSLB to seek changes that accommodate council/CCO concerns); and

4.2 engagement and advocacy with DIA (as policy/system stewards – as well as NTU, which is more focused on standing up the WSEs) to ensure they appreciate:

(a) the potential adverse impacts that could flow from the manner on which the transfer provisions are applied to CCOs; and

(b) that the ongoing financial health and viability of such CCOs is a material consideration and relevant to the overall success of both councils and the 3W reforms.

5 This note:

5.1 sets out how the transfer provisions provided for in the WSEA/WSLB will apply to a wholly-owned CCO infrastructure service company that provides services to the council (and third parties, including other councils) relating to (amongst other things) three waters service delivery (e.g. operations support, asset replacement, repairs and maintenance) – referred to below as a **ServiceCo**;

5.2 highlights potential issues for early discussion with DIA/NTU and to inform council/CCO submissions to the select committee considering the WSLB; and

5.3 suggests the steps that a ServiceCo and/or its council owner could take to identify the relevant issues and impacts for the ServiceCo and engage with DIA/NTU to seek to avoid or mitigate adverse impacts (refer **paragraph 37**).

6 The nature and size of any adverse issues will also depend very much on the approach DIA/NTU proposes to adopt for it comes to a ServiceCo.

7 The preferred outcome would be for DIA/NTU to adopt a 'least harm' approach to the existing ServiceCo model, which is replicated throughout NZ. This part of the current operating model is not broken or a primary focus of the key policy drivers for 3W reform. The existing ServiceCo model is highly integrated and already shaped by commercial drivers, but designed to provide a pricing advantage to councils/ratepayers. This should be maintained (at least in the near term) as it provides material benefits for councils that need to be preserved and can be extended to the WSE. To do otherwise would risk material disruption and give rise to a range of unintended consequences. We understand that, to date, the NTU approach/plan and none of these potential impacts have been explained or surfaced in the general engagement that has occurred to date between the sector (councils/CCOs) and DIA/NTU.

8 A 'least harm' approach would most easily be achieved by:

8.1 in the case of contracts between a council and ServiceCo that are specific to, and exclusively relate to, service support for 3W infrastructure that will transfer to a WSE, substituting the WSE in for the council as the recipient of services under that contract; and

8.2 in the case of global/portfolio contracts (where water services that a WSE will have an interest in are just a part), having the WSE and the council share the benefit of the contract and each be the recipient of services under it – in the case of the WSE just for services that relate to core 3W infrastructure assets the WSE will own.

9 For the purpose of this note, we have assumed that:

9.1 the council owner (not the ServiceCo) owns all local 3W infrastructure assets to be transferred to the relevant water services entity (**WSE**); and

9.2 the ServiceCo provides services (including to its council owner) under contract on arms' length terms and conditions.

PART ONE: HOW THE WATER SERVICES LEGISLATION TRANSFER PROVISIONS APPLY TO A SERVICECO

10 Under the WSEA, **relevant** staff, assets/property, contracts, and liabilities of a 'local government organisation' may be transferred to the WSE. A 'local government organisation' means any council, **CCO** or CCO subsidiary that provides (any) services related to the provision of 3W. This means a ServiceCo providing a *mix* of 3W services and other non-3W related services will be considered a 'local government organisation', and will be subject to the 3W transfer provisions.

Exception for mixed-shareholder CCOs

11 Under the WSEA, a 'mixed-shareholder CCO' is defined as a CCO which has:

11.1 one or more shareholders that are local government organisations; and

11.2 one or more shareholders that are *not* local government organisations.

12 Unlike a CCO wholly-owned by its council, a mixed-shareholder CCO will **not** have its 'assets, liabilities, and other matters'[1] listed on an 'allocation schedule' (and therefore transferred to the WSE). Instead, the WSE will receive all of the *shares* in that mixed-shareholder CCO that are held by the local government organisations. The staff transfer provisions also do **not** apply to a mixed-shareholder CCO.

DIA will prepare an 'establishment water services plan'

13 DIA is required to produce (and publish) an 'establishment water services plan' (see clause 9 of Schedule 1 to the WSEA). This will include:

13.1 the processes, policies, and guidance for identifying the functions, staff and assets, liabilities, and other matters (including contracts) that will be transferred from a 'local government organisation' to the WSE; and

13.2 the proposed timing for the transfer of those functions, staff, and assets, liabilities and other matters to the WSE.

WSE establishment chief executive will prepare an 'allocation schedule'

14 The WSE establishment chief executive must prepare an 'allocation schedule', which specifies the assets, liabilities and other matters (including contracts) it recommends transferring to the WSE that are currently held by 'local government organisations' (see clause 5 of Schedule 1 to the WSEA).

15 When preparing the allocation schedule, the establishment chief executive will set out the assets, liabilities and other matters (including contracts) held by a 'local government organisation' that:

[1] This is a term that is defined in clause 1 of Schedule 1 to the WSEA. It is *very* widely defined and catches everything other than staff which are addressed by a separate transfer mechanism.

15.1 relate *wholly* to the provision of water services; and

15.2 relate *partly* to the provision of water services, and partly to the provision of other services.

16 Like councils, a ServiceCo will be required to co-operate with the relevant WSE and the NTU to facilitate the preparation of the allocation schedule. This includes the provision of information relevant to NTU's planning.

Transferring assets held by a ServiceCo

17 As a general principle, assets/property held by the ServiceCo will be included in the '**should-not-transfer**' section of the allocation schedule if:

17.1 the assets/property has more than one purpose or use; **and**

17.2 the primary purpose or predominant use of the assets/property is **not** the delivery of 3W services.

18 This is a 'guiding principle', which the establishment chief executive must have regard to when preparing the allocation schedule. As such, it is possible that the NTU could seek to add such assets/property to the 'transfer' section.

19 Data held by a ServiceCo (that relates to the provision of 3W services) will be included within the broad definition of 'assets, liabilities and other matters'. As such, that data will be specified in the relevant allocation schedule, and (if it is to be transferred to the WSE) vested in the WSE through the process discussed below.

20 The *proposed new* clause 43(1)(e) of Schedule 1 to the WSEA makes it clear that 'information' held by a ServiceCo that relates wholly to the provision of 3W services will automatically become the information of the WSE.

21 Once the ServiceCo's assets are set out in the allocation schedule, the Governor-General may (by Order in Council) vest those assets in the relevant WSE. The Governor-General will also specify assets that will **not** vest in the WSE (under *proposed new* clause 42 of Schedule 1 to the WSEA).

Transferring debt held by a ServiceCo

22 The WSLB sets out how the relevant WSE will compensate councils for the total debt owed by that council in respect of any 3W *infrastructure*. We have assumed the ServiceCo will *not* hold the relevant 3W infrastructure, and as a result, we have not discussed this debt transfer provision in detail.

23 However, debt held by a ServiceCo *relating* to the provision of 3W services (e.g. debt incurred to enable it to provide 3W services to its owner council) could be transferred to the relevant WSE if it is specified in the relevant allocation schedule.

24 Alternatively, debt outstanding on 1 July 2024 that relates *wholly* to the provision of 3W services will be transferred to the WSE under the 'catch all' provision in clause 43 of Schedule 1 to the WSEA, unless the Governor-General has made an order to

the contrary under clause 42 (i.e. specifically providing that such debt/liability will not transfer to the WSE).

25 However, we note the potential challenge involved in quantifying/allocating a portion of corporate borrowing to a specific activity/assets. This is another matter that will, if relevant, require discussion between the ServiceCo and the NTU.

Transferring contracts held by a ServiceCo

26 Under the WSEA, contracts held by a ServiceCo that relate to the provision of 3W services are included within the definition of 'assets, liabilities and other matters'.

27 The establishment chief executive will specify the contracts held by the ServiceCo that relate wholly or partly to the provision of 3W services, and list these in the allocation schedule for transfer/vesting in the WSE.

28 If a ServiceCo is party to a contract that relates *wholly* to the provision of water services, then the transfer provisions appear to mandate that that contract would vest in the WSE. This makes sense from the council perspective (as recipient of the ServiceCo services – presumably the main scenario the drafters had in mind). It does not fit well where the local government organisation is the service provider which has a range of other business lines.

29 The Minister has significant powers (under *proposed new* clause 52 of Schedule 1 to the WSEA) to give 'directions' to a ServiceCo and a WSE, setting out how a particular contract should be dealt with (regardless of whether it relates wholly or partly to water services). This includes:

29.1 requiring a ServiceCo and a WSE board to negotiate a retention or transfer, or the sharing or splitting (as required) of an existing contract; and/or

29.2 requiring the ServiceCo or the WSE board (or both) to offer any *other third parties* that have rights and obligations under a contract a replacement contract.

30 The WSLB does not *clearly* contemplate (or accommodate) a contract between two 'local government organisations' (i.e. a council and its ServiceCo). In such a scenario, it would make more sense for the ServiceCo to be treated as a 'third party' (even though they are treated as a 'local government organisation' in the rest of the transfer related provisions). Proposed new clause 52 of Schedule 1 to the WSEA should be amended to expressly address this situation. Assuming a ServiceCo is treated as a 'third party' for contracts it has with councils relating to the provision of 3W services (whether its owner council or another council it provides services to), the Minister would be able to:

30.1 require the council and WSE to negotiate the retention or transfer, or sharing or splitting (as the case may be) of that contract; and/or

30.2 require either the council or WSE (or both) to offer the ServiceCo a replacement contract.

The ServiceCo would need to choose (by 1 July 2024) whether to:

30.3 enter into any replacement contract that is offered;

30.4 continue with the existing agreement (in accordance with any requirements set by the Minister); or

30.5 terminate the existing agreement (without compensation).

Transferring staff employed by a ServiceCo

31 To the extent a ServiceCo provides 3W related services and has employees doing that work, it will be classed as an 'existing employer' for the purposes of Schedule 1 to the WSEA.

32 As a result, the chief executive of the department will review the positions of employees employed by the ServiceCo, and will determine whether those positions 'primarily relate to/support the delivery of 3W services'.

33 When determining this the chief executive will consider whether *more than half the employee's time* is spent undertaking duties/responsibilities that primarily relate to 3W services, and whether the removal of duties that do *not* relate to 3W would substantially change the employee's role.

34 A 3W specialist employed by a ServiceCo would likely be caught, assuming more than 50% of their time is spent on 3W related matters.

34.1 A number of adverse impacts could flow from this if the WSE takes over the employment of that person (without even considering whether the WSE would be able to manage/support those new employees). The loss of that staff member (bearing in mind they may be difficult, if not impossible, to replace) is likely to materially compromise the ability for the ServiceCo to perform *other* water related services (e.g. relating to drainage or flood protection and control, transport stormwater and non-urban stormwater) under:

(a) its contracts with its owner council; and

(b) its contracts with other councils and third parties.

34.2 The value of those contracts (to all parties) would be diminished accordingly and could result in default/breach or those services being unavailable in the way they are now. The issues will be made worse if the relevant staff leaves ahead of the transfer date (1 July 2024) as a result of the uncertainty created by the 3W reform process.

35 If the relevant ServiceCo employee's duties/responsibilities primarily relate to, or primarily support, the delivery of 3W services, and the employee is not a senior manager, the chief executive of the WSE must offer that employee an employment position. As such, Schedule 1 to the WSEA creates entitlements for employees and it is not just a matter for agreement between the WSE/NTU and a ServiceCo.

36 The employee may choose to remain on the terms of their existing agreement, or accept any new agreement offered by the WSE. The employee is not obligated to accept any offer made by the WSE.

PART TWO: ACTIONS

37 To the extent not already underway, a ServiceCo (and its owner council) should consider doing the following:

Categorise water services related activities

38 The ServiceCo should identify which of its ongoing water related services/activities relate to:

38.1 **Cat 1 3W services:** these are services/activities that:

(a) the ServiceCo provides to its owner council and/or other local government organisations; and

(b) relate to water services which will be provided by the WSE after 1 July 2024 (i.e. water supply, wastewater and urban storm water services).[2]

38.2 **Cat 2 water services:** these are services/activities that:

(a) the ServiceCo provides to its owner council and/or other local government organisations; and

(b) relate to water services which will **not** be provided by the WSE after 1 July 2024 (e.g. non-urban stormwater, transport stormwater, drainage and flood protection and control).

38.3 **Cat 3 water services:** these are services/activities that:

(a) the ServiceCo provides to third parties who are **not** local government organisations; and

(b) relate to 3W infrastructure being constructed by a developer that will eventually vest in the council/WSE (e.g. a greenfields residential subdivision).

Identify what portion of assets/property, staff and contracts relate to Cat 1 3W services

39 The ServiceCo should then identify the following:

39.1 what ServiceCo staff are dedicated to (or the portion of their time that relates to) providing Cat 1 3W services (i.e. and assessing whether and who spends more than 50% of their normal work on that work type);

[2] Note: we have not contemplated a situation where a ServiceCo provides services to a third party, who provides its *own* services to a local government organisation that relate to 3W services.

39.2 what ServiceCo assets/property are used exclusively or predominantly for Cat 1 3W services;

39.3 what ServiceCo assets/property has more than one purpose or use, but their primary purpose or predominant use is for the delivery of Cat 1 3W services;

39.4 what ServiceCo contracts (where ServiceCo is the service provider) have a Cat 1 3W component, including those with:

(a) the ServiceCo's owner council; and

(b) other local government organisations.

39.5 what ServiceCo contracts (where ServiceCo receives goods/services from suppliers) have a Cat 1 3W component.

40 Further due diligence would then be needed on those items which are not clearly out of scope.

Request DIA/NTU to provide its establishment water services plan

41 The ServiceCo should ask DIA/NTU to provide the 'establishment water services plan' for its WSE (as set out under clause 9 of Schedule 1 to the WSEA), or the detail that will be included within that plan, including (in particular):

41.1 the processes, policies, and guidance for identifying the staff, assets, liabilities, and other matters (including contracts, information and equipment) that will be transferred to the WSE (by the ServiceCo); and

41.2 the proposed timing for the transfer by the ServiceCo of staff, assets, liabilities and other matters to the WSE.

Request the draft allocation schedule

42 The ServiceCo should request the establishment chief executive to provide its draft 'allocation schedule' (as set out under clause 5 of Schedule 1 to the WSEA), which sets out the assets, liabilities, and other matters of the ServiceCo that DIA/NTU considers:

42.1 relate *wholly* to the provision of Cat 1 3W services (including contracts);

42.2 relate *partly* to the provision of Cat 1 3W services, and *partly* to the provision of other services (including Cat 2 and Cat 3 water services).

43 NTU has invited engagement around ServiceCos. Having made the headline enquiries mentioned above and with an understanding of the approach the NTU is actually proposing, a ServiceCo and its owner council should promote (where relevant) to the NTU their assessment/classification of staff and activities and preferred 'treatment' and outcome in the context of assets, liabilities and other matters to be transferred to the NTU.

Assess which decisions may impact the assets, liabilities or other matters to be transferred to the WSE

44 Under clause 32 of Schedule 1 to the WSEA, a local government organisation must obtain approval from DIA before it makes a decision which will have a 'significant negative impact on the assets, liabilities, or other matters that are to be transferred to the WSE'.

45 The inquiry actions mentioned above will help the ServiceCo to assess which of its 'decisions' (looking out over the next 18 months) may be subject to such oversight/approval. Currently, it is unclear how these oversight provisions will play out in practice. If a ServiceCo is unsure whether a decision will have a 'significant negative impact', it would be prudent to engage with DIA early on the matter.

'no worse off'

46 The 'support package' promised by the Government (which will be funded by the relevant WSE) contains a 'no worse off' component. This is intended to ensure that financially, no council is in a materially worse off position to provide services to its community directly because of the 3W reform.

47 The council/ServiceCo should also consider and seek to quantify any likely adverse financial/commercial impact on the ServiceCo arising from the application of the WSEA transfer provisions if the 'least harm' approach we suggest above is not adopted. This will be important to making the case to receive a 'no worse off' payment (referred to in clause 36 of Schedule 1 to the WSEA), as compensation for any net detriment. Relevant to this assessment will be:

47.1 the commercial value of the ServiceCo as a council investment (including loss of dividend income, and what this may mean for funding the council's other activities which rely on that as a source of funding); and

47.2 the capacity/capability of the ServiceCo to meet its existing (potentially long term) contractual commitments to other parties;

47.3 the ability for the ServiceCo to continue to operate profitably and viably absent the relevant staff, assets and business lines which have been identified for transfer to the WSE.

48 For example, if a ServiceCo loses 3W related business and/or expertise, its ongoing profitability or viability may be materially compromised (e.g. because it loses efficiencies of scale and scope). This could mean it would no longer be able to provide other non-3W related services to its owner council. Its owner council would also lose a source of recurring revenue, which may threaten its financial ability to sustainably perform non-water related roles and functions at the existing level of performance.

49 DIA has previously agreed to work with LGNZ and Taituarā to develop agreed principles for how the assessment of financial sustainability (described above) will be undertaken; the methodology for quantifying this support requirement; and the process for undertaking the associated due diligence process with councils. The Government purported to cap this support at a maximum of $250m (across the

country) but, as may soon become evident, the actual nature and extent of the impacts that could arise from a too zealous application of the transfer provisions to ServiceCo arrangements may be significant – bearing in mind that those transfer provisions did not exist at the time of the support package was conceived.

50 The establishment period under the WSEA is now underway. Now is the time to engage with DIA (through or alongside LGNZ and Taituarā) on how the processes in the water services legislation will be applied in practice so that each council (and its ServiceCo) can assess potential adverse impacts and:

50.1 seek to avoid/mitigate them; and

50.2 quantify any adverse financial impact and negotiate compensation through the 'no worse off' support package.