17 February 2023

Committee Secretariat
Finance and Expenditure Select Committee
fe@parliament.govt.nz

Tēnā koe

Tasman District Council's Submission on the Water Services Legislation Bill

Thank you for the opportunity to submit on the Water Services Legislation Bill (WSLB).

Background
Tasman District Council (the Council) is a Unitary Authority near the top of the South Island. The district's estimated population of 57,900 residents is growing at approximately 1.8% per annum in a mix of rural and township settlements. The Council owns and operates the following three waters networks in our communities throughout our district:

- fifteen (15) water supplies, including 11 urban and four rural water schemes;
- eight wastewater networks, including eight treatment plants; and
- fifteen (15) urban drainage areas including stormwater network infrastructure.

Our Submission
Tasman District Council's submission on the WSLB is provided in Appendix 1. A copy of the collective request from the Top of the South Island Councils and ngā iwi o Te Tauihu is provided in Appendix 2.

We wish to speak to our submission during the select committee submission review process.

The Council's contacts for this submission are:

- Mayor Tim King – tim.king@tasman.govt.nz
- Richard Kirby (Group Manager – Community Infrastructure) Richard.Kirby@tasman.govt.nz

We acknowledge the submissions made by Local Government New Zealand and Water New Zealand on the WSLB. We largely support the submission made by Taituarā — Local Government Professionals Aotearoa.

Thank you again for the opportunity to submit on this important Bill. We strongly encourage the Government to continue to engage with Local Government, iwi, and the wider community throughout this process.

Na māua noa, nā

Tim King
Mayor, Tasman District
Te Koromatua o te tai o Aorere

Leonie Rae
Chief Executive Officer
Tumu Whakarae

Tasman District Council
Email info@tasman.govt.nz
Website www.tasman.govt.nz
24 hour assistance

Richmond
189 Queen Street
Private Bag 4
Richmond 7050
New Zealand
Phone 03 543 8400
Fax 03 543 9524

Murchison
92 Fairfax Street
Murchison 7007
New Zealand
Phone 03 523 1013
Fax 03 523 1012

Motueka
7 Hickmott Place
PO Box 123
Motueka 7143
New Zealand
Phone 03 528 2022
Fax 03 528 9751

Takaka
78 Commercial Street
PO Box 74
Takaka 7142
New Zealand
Phone 03 525 0020
Fax 03 525 9972

Appendix 1: Tasman District Council's submission on the Water Services Legislation Bill (WSLB)

We are in general support of the Government's intended outcomes of the Water Reforms including:

- safe, reliable drinking water;
- better environmental performance of wastewater and stormwater services;
- efficient, sustainable, resilient, and accountable multi-regional three waters services and management; and
- making it affordable for future generations.

However, we have a number of concerns about some of the provisions set out in the Water Services Legislation Bill (WSLB). Our concerns and comments relate to the following matters:

1. Entity Service Areas
2. Integration of Water Services Legislation and Regulation
3. Pricing, Charging, and Funding
4. Stormwater
5. Water Supplies
6. Te Mana o te Wai
7. Governance Structure
8. Government Policy Statements
9. Consumer Engagement and Agreements
10. Collaboration and Engagement Agreements

1 Entity Service Areas

1.1 We consider that a more logical and pragmatic approach needs to be adopted to the service areas of Water Services Entities and their associated boundaries, to ensure the water services asset networks and townships currently within an entire territorial authority area are encompassed entirely within a single entity service area. This request specifically relates to the three water assets of Marlborough District, Nelson City, and Tasman District Councils.

We strongly request that the Government include all Top of the South/Te Tauihu three water assets (within Marlborough District, Nelson City, and Tasman District Councils) in the Southern Water Services Entity ('Entity D'), not the Eastern Central Water Services Entity ('Entity C'), for the following key reasons:

- cultural identity
- administrative and operational efficiency
- the boundaries reflect and align with the Government's recent reforms

Cultural identity

1.2 Importantly, Te Waipounamu / the South Island has a cultural identity that is distinct from Te Ika a Māui / the North Island. It is culturally significant for ngā iwi o Te Tauihu, that Te Tauihu remains connected to and encompassed within Te Waipounamu.

1.3 It is culturally inappropriate to break off the prow of the waka (Te Tauihu o te Waka a Maui) from Te Waipounamu.

Please refer to the copy of our request in Appendix 2: Copy of Top of the South Island Councils and ngā iwi o Te Tauihu Collective Request

1.4 All signatories to this letter are aligned in one accord on this issue, an issue of the most significant importance to all parties

Administrative and operational efficiency

1.5 Schedule 2 (Parts 3 and 4) of the Water Services Entities Act states Tasman District Council (and Marlborough District Council) is partly included in the Eastern-Central WSE service area and also partly included in the Southern WSE service area.

1.6 For example, the community of Murchison which lies within the Tasman District is within the service area of the Southern WSE service area. This will cause duplication and overlap of administrative, regulatory, and operational issues, and additional costs for both Councils and WSEs.

Entity boundary alignment with other Governments reforms

1.7 We consider including Te Tauihu within the Southern WSE also reflects and aligns with other recent Government reforms; for example, the recently adopted health reforms, where the South Island is a single entity.

1.8 Our request that Tasman District Council, along with Nelson City Council and Marlborough District Council, are included entirely within the Southern WSE service area would:

- preserve the cultural identity of Te Tauihu and Te Waipounamu;
- remove the administrative complexities associated with our water services networks straddling the boundaries of two WSE service areas;
- reduce unnecessary regulatory complications associated with having the Tasman District and Marlborough District water services assets split across two entity service areas;
- maintain the current geographical fit and links with the rest of Te Waipounamu/South Island local authorities and regions;
- reduce unnecessary duplication and additional costs for Councils and WSEs;
- maintain existing transport supply chains to provide operational efficiency and financial benefits;
- reduce the disparity between the publicised averaged water service charges between WSEs;
- reflect and align with the boundaries Governments recent reforms such as the health reforms where the South Island is a single entity.

Recommendation: It is our strong request that the Select Committee amends Parts 3 and 4 of Schedule 2 of the Water Services Entities Act so that all Top of the South/Te Tauihu territorial authority three water assets (of Marlborough District, Nelson City, and Tasman District Councils) are included entirely within the Southern Water Services Entity, not the Eastern-Central Water Services Entity.

1.9 Part 4 of Schedule 2 of the Water Services Entities Act references section 5 of Te Runanga o Ngai Tahu Act 1996 for the definition of the boundaries between the Eastern Central and Southern Water Services Entities. We find this definition difficult to follow and seek a digital map to indicate the precise geospatial boundary that delineates the Eastern Central and Southern Water Services Entities.

Recommendation: We request the provision of digitally mapped information, that precisely defines the geospatial boundary of all four Water Services Entities.

2 Integration of Water Services Legislation and Regulation

Integration and Alignment of Water Services Legislation

2.1 There is a significant risk of misalignment between this Water Services Legislation Bill (WSLB), other water legislation, as well as other significant reform programmes such as the Resource Management Reform and the Future for Local Government review. This is of significant concern to us.

2.2 A lack of alignment and integration will lead to inefficient and ineffective outcomes, ambiguity around regulatory roles and responsibilities, and will compromise the proposed efficiencies in delivering three waters services.

2.3 WSEs are predicted to be one of the biggest users of the Natural and Built Environments Bill (NBE Bill) regime. However, except for the Amendments to Resource Management Act 1991 provisions, there are limited references in the WSLB to the NBE bill or the Spatial Planning Bill, and the water-related policies they contain.

2.4 There is a real risk of misalignment, duplication, and potential additional unnecessary costs in Water Service Entity (WSE) rules and requirements. The WSLB and WSE rules, plans and quality requirements, and standards need to align with requirements and definitions under other existing water legislation including:

- Taumata Arowai Water Services Regulator Act 2020;
- Water Services Act 2021; and
- Resource Management Act (RMA) – including resource consent requirements.

Recommendation: That there is a closer alignment of requirements under WSLB and WSE rules with existing Water Services Legislation and we request reviewing all terms, definitions, and policy outcomes to remove conflicts and inconsistencies and improve integration.

2.5 A consequential amendment to the RMA sets out prescribed obligations to notify water service providers of subdivision consents around vesting of assets and connections approvals, and a requirement that Stage 3 approvals have been signed off by a water services entity before a sec 224 certificate is signed off by the Territorial Authority (TA). The WSE also has the power to register consent notices. There is no indication as to how the TA is meant to know about this before the issue of a section 224 certificate.

Recommendation: That a requirement is added to the WSLB to ensure the WSE notifies the Territorial Authority before the issue of a section 224 certificate when the WSE is registering a consent notice.

2.6 WSEs are required to have in place a Trade Waste Plan (s 269). Such a Plan should not be inconsistent with any Natural Built Environment Act (NBEA) Plan or resource consent held by the water services entity.

Recommendation: That an additional safeguard is included in the WSLB to ensure legislative alignment with Trade Waste planning.

2.7 Water Usage restrictions and consumer behaviour rules (under s276) must not be inconsistent with other legislative or regulatory requirements. To ensure legislative alignment, such restrictions and rules should not be inconsistent with any water shortage direction under section 329 of the RMA.

Information Sharing

2.8 WSEs (under s471) are obliged to pass on all information subject to s 44A(2)(b) and (2)(b)(i) of LGOIMA to include such information in a LIM or PIM under the Building Act. Our concern is that liabilities remain for the territorial authorities if the information is not current and there is a delay in updating the information. The responsibilities for as-built data collection, collation and maintenance of as-built information are also unclear to us.

Recommendation: That provisions are included to ensure territorial authorities are not held liable for WSE provided information accuracy or currency, and that clarification is provided about the accountability for ensuring as-built database information is kept up to date.

Regulatory powers

2.9 It seems that the regulation, compliance/enforcement responsibilities for the three waters are being spread across multiple bodies including the WSEs, Taumata Arowai, Commerce Commission and Regional Councils/Unitary Authorities. The lack of clarity over, wider regulatory responsibilities could be quite problematic in practice.

2.10 The Consenting framework will be regionally based and regulated by Regional Councils/Unitary Authorities which means there may be regional variations and potential for variations in practice throughout a service entity area that encompasses more than one Regional Council. Regional consenting authorities will retain some regulatory functions associated with wastewater and stormwater, and Taumata Arowai will retain an overview of quality.

2.11 Greater clarification and separation of roles and limitations of various regulatory bodies will reduce the potential for inconsistencies, duplication, inefficiency and unnecessary additional costs.

Recommendation: We request clearer delineation of the roles and limitations of the various bodies with regulatory powers in three waters legislation.

3 Pricing, Charging, and Funding

Charging

3.1 The WSLB states the Chief Executive of the WSE "may authorise" a local authority to collect charges. If the local authority does not agree, the Minister may determine the matter. This is grossly unfair and a significant imposition on local authorities. In a similar manner to electricity service providers and telecommunication service providers, we consider WSEs should be responsible for their billing to maintain balance sheet separation and to avoid public confusion regarding accountabilities.

3.2 Otherwise: if Council was billing on behalf of the WSEs (in Tasman we would have two WSE service areas to bill for) this should be kept separated from Council's rates and other charging. That would include the responsibility for accounting for GST. The full costs of the system changes or new systems for this should be met by the WSE, however it would still add unnecessary complexity and cost and require additional resourcing.

3.3 Council would be unable to legally add a pass-through WSE charge onto a rates invoice, as the charges are not rates, or legally direct debit ratepayers for these WSE charges, as it does not hold the necessary bank direct debit authority. To obtain those authorities from

ratepayers in Tasman will be resource-intensive and the time and cost involved will be significant for our Council.

3.4 For our Council drinking water charges both volumetric charges and fixed rates. While the rates are invoiced quarterly the volumetric charges for residential are invoiced on a rolling 6-monthly basis. (1/6 of residential customers are billed each month). Businesses and industrial users are billed monthly.

3.5 Overall, there would need to be additional Council resourcing of staff to manage the billing and receipts along with handing over details of non or short-payments to the WSE for follow-up.

Recommendation: That WSEs remain entirely responsible for assessing and invoicing all their water services charges.

Harmonisation of fees and charges

3.6 We acknowledge the Government's rationale for the water reforms is to ensure that consumers and communities receive efficient and affordable three waters services now and in the future.

3.7 'Affordability' is a core principle of the 'case for change'. We are concerned about the lack of direct reference to 'affordability' in the WSLB. We note the new section 133(3)(a)(vii) provides that the government policy statement "may" also include expectations about geographic averaging. However, there is no direction on how, where or when to apply geographic averaging.

3.8 We would like to see consistent and affordable funding and charging arrangements from day one including geographical averaging for water and wastewater services and harmonisation of fees and charges.

Recommendation: That the requirement for harmonisation of fees and charges commences from the establishment of the WSEs on 1 July 2024.

Charging properties not connected

3.9 The WSLB includes in section 339 that a person (except the owner of Maori land or non-rateable land) can be liable to pay for a water or wastewater service even when they may not be connected to a network.

3.10 This is currently the situation for rates (a taxation power reserved for local government) but should not be the case where charges are applied for a service by an entity that is not governed by elected representatives. Unconnected properties should and can be made to pay when they seek a connection, including through a water infrastructure contribution charge. However, there are a significant number of properties in Tasman that are situated near water services networks but not connected, for example only around 30% of the properties in Motueka township are connected to its reticulated water supply.

Recommendation: That liability for water and wastewater service fees apply only to properties that have a connection to a water or wastewater service network.

Crown rates exemption

3.11 It is noted in section 348 that the Crown is exempt from paying any water infrastructure contribution charges. Crown agencies are often major developers, requiring and constructing significant public infrastructure, to be vested and managed by councils and/or WSE. We do not support the Crown exemption from paying infrastructure contribution charges.

Recommendation: Remove section 348 in its entirety.

Charging WSEs rates

3.12 Council general rates are based on Capital value. If WSEs remain exempted from some rates, then the rates cost for other property owners will increase. Council currently charges its 3 waters activities for full rates. This is consistent with other utility providers. Council stands to lose a significant portion of income if 3 waters activities are not charged full rates each year.

Recommendation: That WSEs are liable for payment of all local authority rates on both assets on or in land it owns, and assets within or on land it does not own.

Water Infrastructure Contributions

3.13 We observe that the WSLB carries over some of the nature of Development Contributions (DCs) into Water Infrastructure Contributions (ICs) but not all. The WSE legislation misses key protections for people being charged ICs which are provided for under DCs. It is not at all apparent why similar provisions in DCs are absent from the proposed IC system and why the differences exist.

3.14 We consider it important to replicate most of the provisions relating to DCs in the WSEA/WSLB legislation. The most important of these are highlighted below:

a) Liability for refunds

Under section 200 of the LGA, if councils do not complete significant work that is included in a DC charge or substitute it for another work that achieves the same purposes, they are obliged to refund the DC or part of it. This is essential and fair protection to ensure that councils follow through on what they are charging for.

Similarly, if a resource or building consent lapses, and the development does not proceed, a refund is due because the demand to which the charge relates does not eventuate.

Recommendation: That the WSLB be amended to include similar protections to section 200 of the LGA for those that pay Water Infrastructure Contributions.

b) Objections and reconsiderations

Objections and reconsiderations are provided for in the LGA and are intended to offer a more cost-effective review process than a judicial review. They provide a check and balance on the authority of the council, force a degree of self-scrutiny (reconsiderations), and if needed, independence (objections). Given the autonomy and lack of direct accountability that WSEs have compared to councils, it is even more important that people have low-cost opportunities to have operational decisions reviewed.

Recommendation: That similar provisions to the reconsideration and objection process for Development Contributions be included in the WSE legislation for Water Infrastructure Contributions.

c) Confidence about which policy or charges apply

Section 198(2A) of the LGA provides some protection and certainty to those subject to development contributions about which policy (and therefore charges) will apply to their developments. This is very important as it enables people to make development investment decisions and avoids a council applying additional charges at a future point

when charges may have increased. Since consents can take years to action, this is a very real possibility.

The WSLB provides for ICs to be levied when a resource consent is issued, a building consent is issued, or a connection is granted. Customers that pay ICs are therefore subject to the same uncertainty that would exist for DCs were s.198 (2A) not in force. The water services legislation should include provisions to clarify what happens in these circumstances.

Recommendation: That provisions similar to section 198(2A) of the LGA be provided for in the WSLB for Water Infrastructure Contributions.

d) Outstanding development contributions

The WSLB is unclear about what happens when a development is already subject to 3 waters related development contributions and is obliged to pay the development contribution after 1 July 2024. For example, when the development is subject to an existing development contribution notice or invoice, but payment is due after 1 July 2024.

We question if such developments will also be subject to new infrastructure charges established by the WSE; for example, when they seek a water connection for each new lot, or if they make a minor variation to their consent, or if they will be 'grandfathered' under the development contributions they are already subject to.

This also raises a question about who is responsible for collecting outstanding development contributions after 1 July 2024. The WSBL does not outline whether responsibility for collecting that debt remains with the WSE or the Council.

Recommendation: We request that the WSLB states that existing developments liable for 3 waters development contributions be grandfathered, and that the WSE is responsible for collecting any outstanding development contributions after 1 July 2024.

e) Residual refund liability ambiguity

Section 200 of the LGA outlines situations where councils must refund DCs, including where works are not provided (or substituted) and when a development does not proceed but has paid DCs. The WSE legislation does not articulate what is to happen where these refund triggers are tripped in the future. Council has collected and passed on the funds.

Our question is whether Councils are still liable to make refunds or if that liability will be passed onto the WSE. There appear to be no refund provisions in the WSE legislation which leaves a degree of uncertainty for people who have paid DCs in the circumstances outlined in section 200 of the LGA, and also uncertainty where this leaves Councils.

Recommendation: That unambiguous transition provisions be provided for in the WSLB for Water Infrastructure Contributions that remove any liability for Councils to make refunds related to three waters development contributions after 1 July 2024.

f) Administration of ICs

The WSE legislation provides for ICs to be levied when people are granted a resource or building consent. We would welcome clarification in the WSLB that Councils are not expected to administer this on behalf of the WSE and are merely obliged to forward the WSE notification of new consents.

Recommendation: We request that the WSLB clearly outlines that WSE will be responsible for administering their own infrastructure charges

g) Internal inconsistency of the use of terms 'development and increased commercial demand'

The provisions of the WSE legislation expand on the concept of a 'development' by also referring to instances of 'increased commercial demand'. This is sensible but should be used consistently wherever the term *'development'* is used. For example, the term 'increased commercial demand' is absent from 344(1)(a) of the WSLB, which replicates a section of the LGA. With the absence of the terminology 'increased commercial demand', a potential loophole is created in the WSE legislation that a large commercial operator could exploit to argue they are not subject to an IC if they are only increasing demand and are not a development.

Recommendation: That the terminology 'increased commercial demand' is added to 344(1)(a) of the WSLB.

4 Stormwater

The WSLB spreads Stormwater functions and responsibilities across multiple agencies making a catchment-based and holistic stormwater management approach and the underlying principle of ki uta ki tai ('from the mountains to the sea'), unnecessarily complex and impractical to implement.

4.1 The WSLB model does not sufficiently consider the unique and connected nature of stormwater management that is intrinsically integrated across the many other functions of Territorial Authorities, Regional Councils and Transport Corridor Managers.

Recommendation: That the transfer of stormwater functions from Councils to the WSEs be paused and that these functions remain with Council until a more practical model is developed that better allows for integrated stormwater management, based on a "whole of catchment" approach.

4.2 If the Select Committee elects not to put forward the recommendation above (4.1), there are a number of key issues for us that have been identified, and that relate to the proposed fragmented stormwater management approach:

(a) Charging by the entity for stormwater services will differ from how Council currently collects stormwater rates. Schedule 1 clause 63 states WSEs can bill territorial authorities directly up to 1 July 2027 for all stormwater services provided within the territorial authority boundaries, including properties not benefitting from the service or network. Council considers it unacceptable that the WSE could apply stormwater services charges to customers that are currently not served by stormwater networks and therefore not currently rated for stormwater. It is crucial that WSEs publicly consult on areas that are proposed to be subject to stormwater charges.

Recommendation: That stormwater service charges apply only to properties that have a direct benefit from a stormwater service or network, and that WSEs are required to publicly consult on areas that will be subject to stormwater service charges.

(b) More clarity is required on the key functions of each agency that holds stormwater responsibilities. It is unclear how agencies should work together and how they relate to each other in terms of decision-making powers, application of stormwater network rules, consenting, compliance and enforcement.

(c) The WSE must engage with the Council and likewise, the Council is required to work with the WSE on developing Stormwater Management Plans (SMP). The responsibility for the SMP sits with the WSE however, and the Council's influence is likely to be minimal without any decision-making powers over the SMP. No clause in the WSLB requires the WSE and/or Council to implement the SMP for those parts of the network that the WSE or Council is responsible for. This approach does not support collaboration based on being equal partners and does not promote integrated planning between multiple agencies. This makes it likely that the SMP will be impossible to implement in a meaningful way. The WSLB needs to include an obligation on WSEs to implement their stormwater management plans and require integration with networks managed by other organisations to ensure overall integration of catchment-wide stormwater management planning.

Recommendation: That WSEs are required to implement Stormwater Management Plans that integrate with networks managed by other organisations to ensure catchment-wide management planning of stormwater systems.

(d) New stormwater network rules may have significant implications (financially and spatially) for Council as the Transport Corridor Manager and may turn out to be unaffordable for ratepayers.

Council supports Subpart 2, s 261 requiring written approval from Council before stormwater rules apply to networks that remain with Council. However, it should be noted that this section will likely result in inconsistencies between councils within the same WSE where they don't agree to the same rules.

(e) Stormwater discharges from all urban areas in the Tasman District are authorised by a global stormwater discharge consent. It needs to be clarified how discharge consents and compliance responsibilities transfer to the WSE. Conditions of the global discharge consent apply to all stormwater assets including assets that under the proposed framework will not transfer to the WSE. The Global consent also applies to parts of the Tasman District (Murchison) that transfer to entity D, meaning that if the consent transfers to WSE it needs to be varied and split over two separate consent holders, entity C and D.

Recommendation: That clarification is provided how existing resource consents, such as global stormwater discharge consents, will be separated and cover stormwater services in multiple entity service areas and/or under the management of multiple stormwater service providers.

(f) To avoid duplication of plans, clarification is required on how SMPs interrelate with existing legislated stormwater management plans such as Catchment Management Plans, which are required by our Council's Global Stormwater Discharge Consents.

(g) SMPs need to be provided to Taumata Arowai no earlier than 1 July 2028. Section 258 should clarify how stormwater is managed in the years before a Final SMP is adopted. It is also noted that there is no end date by which plans have to be submitted to Taumata Arowai.

Recommendation: That a timeframe is defined for when WSE Stormwater Management Plans must be submitted to Taumata Arowai, and that the Select Committee also recommends integration of Catchment Management Plans with Stormwater Management Plans.

(h) The WSLB in sections 220(2) and 260 – may require the owner of land to maintain overland flow paths. It is unclear what this means in terms of liability and cost, and whether 'maintain' is meant to refer to 'maintenance' or simply 'preserving or keeping the flow path in existence'. If overland flow paths are part of a stormwater network (i.e. a watercourse or ephemeral stream), these should be the maintenance responsibility of the network provider. If these flow paths are within private property, the WSLB should place obligations on the WSE to consult with the property owners, to notify them of any overland flow path that is part of a stormwater network, and to carry out any remedy required to preserve the flow path, and/or provide the WSE with powers to carry out the remedy.

Recommendation: That the WSLB provide WSEs with obligations to consult and notify owners of private land with overland flow paths that are part of a stormwater network, and also provide WSEs with the powers to remedy any issue that impedes the overland flow path.

5 Water supplies

5.1 We recognise that the needs and concerns of rural communities are unique and varied and that the cost to deliver water services in rural areas is becoming increasingly unaffordable. The transfer of these rural water supplies will help ensure they are financially viable in the medium to long term.

5.2 It is of some concern to us that WSEs may want to divest themselves of some schemes that may be perceived to be less viable and that there is a risk that these transferred schemes may end up in a worse-off position under self-management.

Recommendation: We request some expansion of the provisions to provide additional protection under the Minister's responsibilities for transferred schemes to ensure they are not in a in a worse-off position under self-management.

5.3 We have noted some sections in the WSLB where definitions and the integration of water services legislation relating to water supplies could be improved:

(a) Part 2 Subpart 28, s188 - this section adds a requirement to the Water Services Act to provide drinking water sufficient to meet "sanitary needs" along with ordinary drinking water needs. The actual quantity that is required needs to be subject to a definition as this was problematic under the Health Act, section 69.

Recommendation: We request that the actual quantity of drinking water that is 'sufficient' to meet 'ordinary drinking water' and 'sanitary needs' is defined.

(b) Controlled drinking water catchments – (Part 7 s231)

A WSE may designate controlled drinking water catchment areas for a geographical area surrounding surface take and a groundwater zone from which water is abstracted. It is unclear whether this is intended to be the same or conflicts with the National Environmental Standard for Drinking Water Sources and Source Water Risk Management Plans.

Recommendation: We request clarifying how and/or if the requirements under Part 7 Controlled Drinking Water Catchment Areas, intersect and relate to the Source Water Risk Management Plans that are a requirement under the Water Services Act 2021.

(c) Mixed-use water supplies - (Part 8 s234 (a))

We consider 85% or more of the total volume supplied for agricultural or horticultural purposes to be a reasonable cut-off for transfer. However, the Water Services Act, via the Drinking Water Acceptable Solution for Mixed-use Rural Water Supplies, defines mixed-use rural as where 50% or more of water is for agricultural or horticultural purposes. Some alignment in definitions is recommended.

Recommendation: We request some alignment in definitions of 'Mixed-use water supply' between the Water Services Act and the Water Services Legislation Bill

(d) It is unclear why there is an ability in Part 7 s250(6)(c) for the WSE to recover costs of fixing a "significant problem or potential problem with a drinking water supply" from the "previous supplier". This clause is unnecessary in transferred schemes. We recommend this provision is deleted.

Recommendation: We recommend the deletion of Part 7 s250 (6)(c)

(e) Volumetric charging (and restrictors in rural areas with limited water supplies) is crucial to managing demand in water services. Not only can meters be used to fairly apportion costs across the WSE consumers but is an effective means of managing demand and water losses to improve the efficiency and cost-effectiveness of the water services. We understand it is unlikely that WSE will have meters installed across all serviced areas from 1 July 2024, however we see significant benefit in a requirement in which universal metering is made mandatory.

Recommendation: That metering is made mandatory within a defined time period

(f) Part 12, subpart 4, s415 - Wasting drinking water. This seems a very ill-defined concept and difficult to detect and/or enforce. The term "risk " is used without qualification. The term "waste" is subjective. Only a small part of water provided through networks is used for drinking therefore how an offence would be described is difficult to foresee. Recommend this clause be removed entirely.

Recommendation: We recommend the deletion of Part 12 Subpart 4 s415

6 Te Mana o te Wai

6.1 WSEs will need to engage closely with mana whenua starting before the 1 July 2024 establishment date. This will help to ensure that Te Mana o Te Wai (TMOTW) statements are embedded in work programmes in the transition and toward the commencement of the WSEs. It is unclear to us at this stage if and how ngā iwi o Te Tauihu will be effectively engaged to ensure fair representation for Te Tauihu iwi within the Eastern-Central Entity.

6.2 We hear from our iwi partners the increasing pressures being placed on them and their limitations on the capacity of resources to meet these demands, and their involvement in the development and implementation of TMOTW statements will add to this demand.

6.3 The time-constrained period for submissions on the WSLB has resulted in a very limited timeframe to enable effective communication with ngā iwi o Te Tauihu and to undertake any opportunity for shared feedback on Part 1- section 4 of the WSLB about the amended content in section 5 of the Water Services Entities Act.

7 Governance Structure

7.1 We acknowledge and support the amendment to the permitted number of members forming the Regional Representative Group (RRG) - made up of local authority and mana whenua representatives, that will now allow for fair and equitable representation of member councils.

7.2 We acknowledge and support that RRG be broadly representative of the different mix of metropolitan, provincial, and rural communities they represent and also that RRG members may promote and support the characteristic features of the territory they represent.

7.3 We also support the expansion of the skillsets required of the WSE Board; made up of competency-based professionals.

7.4 In general, we are concerned that the potential size of the RRG, created as a result of fair and equitable representation, will result in increased costs, and result in a reduction of the efficiency of decision-making by the group.

8 Government Policy Statements

8.1 The Water Services Act provides the ability for the Minister to issue Government Policy Statements for Water Services that will set out the Government's priorities for water services.

8.2 We are concerned that this provision provides a mechanism to significantly direct WSE decisions that impact investment and spending. Government priorities may potentially conflict, or be inconsistent, with policy positions of a Regional Representation Group, or the requirements and regulations of other water services regulatory bodies, local authorities, or mana whenua within a WSE service area. We fear that too many priorities will impede progress or direction, and result in additional inefficiency, and cost on the WSE and therefore increase costs for the consumer.

Recommendation: That the Government support WSEs with funding to implement the Government Policy Statement for Water Services.

9 Consumer Engagement and Agreements

9.1 The success of the water services transfer and implementation will in some part depend on a smooth and well-managed transition. We are concerned about the lack of targeted communication and engagement with the public and request that the Water Services Entities are required to develop and implement a detailed and robust communications programme to help manage the public information requirements throughout the water reform transition.

Recommendation: That before and leading up to 1 July 2024, the Water Services Entities are required to develop and implement detailed and robust communications programmes to help manage the public information requirements throughout the water reforms transition.

9.2 WSE service agreements with consumers will not be entered into individually. It is not clear how WSE Service (deemed) agreements with the consumer are entered into when legislation comes into force.

9.3 This will need to be clearly communicated with the consumer and should also be detailed in the WSE communication programme for consumers.

Recommendation: That greater clarity is provided within the WSE communications plan around how WSE service agreements with consumers are communicated and entered into.

10 Collaboration and Engagement Agreements

10.1 We have concerns about how the effectiveness of WSE collaboration and engagement is measured, monitored, reviewed, and regulated.

10.2 WSE engagement and collaboration agreements will be crucial to enable Councils to meet their obligations, for example under the Resource Management Act, and National Policy Statement on Urban Development, to enable growth, and housing development, and to inform Future Development Strategies. These agreements will need to be prepared well before WSE commencement. It is not clear how enforceable these agreements will be.

10.3 The Minister must commission a review of the effectiveness of water services legislation under section 456 Comprehensive review of water services legislation, however it is unclear to us if this extends to measuring the effectiveness of WSE engagement and collaboration with territorial authorities.

Recommendation: We request that Water Services Legislation Bill Pt1 s22 proposed new section 456 of the WSE Act - subsection (3) include that Ministerial Reviews also include some requirements to measure how effectively WSEs are engaging and collaborating with territorial authorities.

10.4 The contents of a relationship agreement are detailed in section 468. In particular, s468 (1) (c) (iv) is important to enabling the territorial authority to meet its obligations under the RMA, the replacement Bills, and the National Policy Statement on Urban Development (NPS UD) to strategically plan to ensure sufficient capacity is provided to meet the demand for housing and business land.

10.5 The timing of the relationship agreements is unclear to us and deadlines as to when these agreements must be in place appear to be lacking. The NPS UD requires that Local Authorities must seek information and comment from providers of development infrastructure and additional infrastructure in preparing their Housing and Business Assessment (HBA) (which forms part of the 2024 Long Term Plan).

10.6 Given Local Authorities have been directed not to include three waters in their 2024 Long Term Plans, it is unclear how the HBA should be formulated concerning 3 waters servicing until the WSEs become three waters services providers from 1 July 2024.

10.7 Given the Water Services Entities Act is now in force and the transition is well underway, this concern equally applies to the preparation and review of Future Development Strategies and the required information for those on three waters servicing.

Recommendation: That clarification is provided on which body is going to provide 3 waters serving information for strategic planning by the territorial authority between now and 1 July 2024.

Appendix 2: Copy of Top of the South Island Councils and ngā iwi o Te Tauihu Collective Request

16 February 2023

Department of the Prime Minister and Cabinet

Cabinet Office

Level 10

Executive Wing

Parliament Buildings

Wellington 6011
Phone: (04) 830 5010
cabinetoffice@dpmc.govt.nz

Tēnā kōrua Prime Minister Rt Hon Chris Hipkins and Hon Kieran McAnulty

Collective request to include Te Tauihu in entity D (Southern Water Services Entity)

Ngā iwi o Te Tauihu o Te Waka a Māui - Ngāti Apa ki te Rā Tō, Ngāti Koata, Ngāti Kuia, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, Ngāti Toa Rangatira, Rangitāne o Wairau, Te Ātiawa o Te Waka-a-Māui, together with Tasman District Council, Nelson City Council and Marlborough District Council collectively represent people and publicly owned three waters assets in Te Tauihu.

We speak with one voice in this letter.

We understand that our previous recommendation to the Finance and Expenditure Select Committee that three water services and assets be included in entity D (Southern Water Services Entity) was not accepted.

We are extremely disappointed in this outcome and request that you reconsider our collective recommendation and request to include our three water services and assets in Entity D.

Please note that the request in this letter is not an overall endorsement of the Three Waters Reform Programme but simply a request to move to Entity D.

We each have our reasons for this position including cultural identity and connection, geographic fit, commonality with other communities, and alignment with Government's recent Health Reform boundaries.

Collectively we request that you respect our request and make this change to the Water Service Entities Act.

Nāku iti noa, nā

Nā Hinemoa Connor
Chair, Ngāti Apa ki Te Rā Tō

Nā Caroline Palmer
Chair, Ngāti Koata Trust

Nā Huataki Whareaitu
Chair, Te Rūnanga o NgātiKuia

Nā Olivia Hall
Chair, Te Rūnanga o Ngāti Rārua

Nā Anthony Little
Chair, Ngāti Tama ki Te Waipounamu Trust

Nā Callum Katene
Chair, Ngāti Toa Rangatira

Nā Calvin Hart
Co-Chair, Rangitāne o Wairau

Nā Janis de Thierry
Co-Chair, Rangitāne o Wairau

Nā RachelHāte
Chair, Te Ātiawa o Te Waka-a-Māui

Mayor Tim King
Tasman District Council

Mayor Nick Smith
Nelson City Council

Mayor Nadine Taylor
Marlborough District Council

Appendix 3: Summary of our recommended amendments to the Water Services Legislation Bill (WSLB)

1.8 It is our strong request that the Select Committee amends Parts 3 and 4 of Schedule 2 of the Water Services Entities Act so that all Top of the South/Te Tauihu territorial authority three water assets (of Marlborough District, Nelson City, and Tasman District Councils) are included entirely within the Southern Water Services Entity, not the Eastern-Central Water Services Entity.

1.9 We request the provision of digitally mapped information, that precisely defines the geospatial boundary of all four Water Services Entities.

2.4 That there is a closer alignment of requirements under WSLB and WSE rules with existing Water Services Legislation and we request reviewing all terms, definitions, and policy outcomes to remove conflicts and inconsistencies and improve integration.

2.5 That a requirement is added to the WSLB to ensure the WSE notifies the Territorial Authority before the issue of a section 224 certificate when the WSE is registering a consent notice.

2.6 That an additional safeguard is included in the WSLB to ensure legislative alignment with Trade Waste planning.

2.8 That provisions are included to ensure territorial authorities are not held liable for WSE provided information accuracy or currency, and that clarification is provided about the accountability for ensuring as-built database information is kept up to date.

2.11 We request clearer delineation of the roles and limitations of the various bodies with regulatory powers in three waters legislation.

3.5 That WSEs remain entirely responsible for assessing and invoicing all their water services charges.

3.8 That the requirement for harmonisation of fees and charges commences from the establishment of the WSEs on 1 July 2024.

3.10 That liability for water and wastewater service fees apply only to properties that have a connection to a water or wastewater service network.

3.11 Remove section 348 in its entirety.

3.12 That WSEs are liable for payment of all local authority rates on both assets on or in land it owns, and assets within or on land it does not own.

3.14 a) That the WSLB be amended to include similar protections to section 200 of the LGA for those that pay Water Infrastructure Contributions.

3.14 b) That similar provisions to the reconsideration and objection process for Development Contributions be included in the WSE legislation for Water Infrastructure Contributions.

3.14 c) That provisions similar to section 198(2A) of the LGA be provided for in the WSLB for Water Infrastructure Contributions.

3.14 d) We request that the WSLB states that existing developments liable for 3 waters development contributions be grandfathered, and that the WSE is responsible for collecting any outstanding development contributions after 1 July 2024.

3.14 e) That unambiguous transition provisions be provided for in the WSLB for Water Infrastructure Contributions that remove any liability for Councils to make refunds related to three waters development contributions after 1 July 2024.

3.14 f) We request that the WSLB clearly outlines that WSE will be responsible for administering their own infrastructure charges.

3.14 g) That the terminology ‘increased commercial demand’ is added to 344(1)(a) of the WSLB.

4.1 That the transfer of stormwater functions from Councils to the WSEs be paused and that these functions remain with Council until a more practical model is developed that better allows for integrated stormwater management, based on a “whole of catchment” approach.

4.2 a) That stormwater service charges apply only to properties that have a direct benefit from a stormwater service or network, and that WSEs are required to publicly consult on areas that will be subject to stormwater service charges.

4.2 c) That WSEs are required to implement Stormwater Management Plans that integrate with networks managed by other organisations to ensure catchment-wide management planning of stormwater systems.

4.2 e) That clarification is provided how existing resource consents, such as global stormwater discharge consents, will be separated and cover stormwater services in multiple entity service areas and/or multiple stormwater service providers.

4.2 g) That a timeframe is defined for when WSE Stormwater Management Plans must be submitted to Taumata Arowai, and that the Select Committee also recommends integration of Catchment Management Plans with Stormwater Management Plans.

4.2 h) That the WSLB provide WSEs with obligations to consult and notify owners of private land with overland flow paths that are part of a stormwater network, and also provide WSEs with the powers to remedy any issue that impedes the overland flow path.

5.2 We request some expansion of the provisions to provide additional protection under the Minister’s responsibilities for transferred schemes to ensure they are not in a in a worse-off position under self-management.

5.3 a) We request that the actual quantity of drinking water that is ‘sufficient’ to meet ‘ordinary drinking water’ and ‘sanitary needs’ is defined.

5.3 b) We request clarifying how and/or if the requirements under Part 7 Controlled Drinking Water Catchment Areas, intersect and relate to the Source Water Risk Management Plans that are a requirement under the Water Services Act 2021.

5.3 c) We request some alignment in definitions of ‘Mixed-use water supply’ between the Water Services Act and the Water Services Legislation Bill.

5.3 d) We recommend the deletion of Part 7 s250 (6) (c).

5.3 e) Recommendation: That metering is made mandatory within a defined time period.

5.3 f) We recommend the deletion of Part 12 Subpart 4 s415.

8.2 That the Government support WSEs with funding to implement the Government Policy Statement for Water Services.

9.1 That before and leading up to 1 July 2024, the Water Services Entities are required to develop and implement detailed and robust communications programmes to help manage the public information requirements throughout the water reforms transition.

9.3 That greater clarity is provided within the WSE communications plan around how WSE service agreements with consumers are communicated and entered into.

10.3 We request that Water Services Legislation Bill Pt1 s22 proposed new section 456 of the WSE Act - subsection (3) include that Ministerial Reviews also include some requirements to measure how effectively WSEs are engaging and collaborating with territorial authorities.

10.7 That clarification is provided on which body is going to provide 3 waters serving information for strategic planning by the territorial authority between now and 1 July 2024.