Greater Wellington
Te Pane Matua Taiao

By email

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Committee Secretariat
Finance and Expenditure Committee
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Tēnā Koe

Local Government (Water Services) Bill Submission

Greater Wellington (GW) broadly supports the joint council submission from the Wellington metropolitan area apart from two key areas.

- Water services have a key role to play in environmental quality and their effective and efficient operation is critical to ensure water is healthy and safe
- GW has a long history of partnerships with mana whenua. We need to ensure the legislative settings protect these partnerships and Māori rights and interests.

We also wish to raise a specific legislative issue:

- There are specific Acts of Parliament that set GW's bulk water functions and responsibilities. These will need to be reviewed in due course to ensure the new entity has the appropriate powers and functions. In the meantime, GW submits that these two Acts should not be amended or repealed by the Bill.

We expand on these points below.

The impact of water services on te Taiao / environmental quality

Water services have a major impact on environmental quality which has knock on effects to economic growth, health, social connection and cultural practices. This can be in the form of aging wastewater treatment plants and infrastructure, leaking pipes, over capacity systems and so on. Heavy rainfall causes poor stormwater quality water across the Wellington region, often due to failing or poorly designed infrastructure.

Sufficient and sustainable investment in water services infrastructure is the major factor to improve water quality and this needs to be a key premise to the objectives of Water Organisations (WOS). The current wording in the Bill (15(i)(a)(ii)) is that the provided water services "do not have adverse effects on the environment". GW supports this framing which reflects the critical role of WOs.

We note that a single environmental standard, regardless of the sensitivity of the receiving environment (under clause 269), will make the achievement of environmental improvements, and this objective, challenging. We support the view of the Parliamentary Commissioner for the Environment on this issue (see https://pce.parliament.nz/media/yjojwndj/pce-submission-on-local-government-water-services-bill.pdf).

We recommend that 'environmental performance standards' should be replaced with 'operational performance standards' or 'infrastructure performance standards' to better reflect what the standards are trying to achieve. GW would support operational standards for the performance of physical assets like pipes and pump stations.

Environmental standards, if too stringent, are likely to lead to some wastewater systems being over-engineered for their receiving environment and therefore more costly for water users while providing little environmental benefit. If the standards are too lenient this could lead to a reduction in receiving environment water quality which would further concern the communities and our mana whenua partners who connect with our waterways for recreational use and mahinga kai. In short, it is difficult to foresee how a single generic environmental standard could provide a consistent level of acceptable treatment and still acknowledge the variety of receiving environments, the values of those receiving environments and the communities that they service.

Even if the standards are broken down by receiving environment, there can be vast differences in the sensitivity of those environments. For example, the discharge from a treatment plant which discharges to the ocean via a short outfall into an area of significance to mana whenua and adjacent to recreational areas will need to be of a higher quality than those discharging via a long outfall to a remote area where there is high dilution. The differences in river or lake environments will be even more stark. Again, the sensitivity of discharges to land will depend on the location of confined, semi confined and unconfined aquifers, bores used for potable water or industry use, and rivers, lakes and natural wetlands.

How environmental standards will work in practice for stormwater discharges is also unclear, given the existing network and current lack of treatment in many urban centres, and the large number of stormwater outlets to a variety of receiving environments.

Clause 273, in relation to proposed changes to section 104 of the RMA, also now makes clear that if a wastewater or stormwater environmental standard is not met, then consent cannot be granted. This essentially makes the discharge of stormwater or wastewater a prohibited activity. Given that the discharge of wastewater and stormwater is unable to be 'stopped' (rain will keep falling etc) unless the standards are very lenient, we will end up with a situation where many discharges will not be able to be consented. This will create significant uncertainty for WSOs, councils and communities, and may not result in improvements. The alternative is lenient standards which will not result in better water quality and renders these proposed environmental standards redundant.

At the very least, if environmental standards are to remain, councils should be able to make more rigorous standards to protect particularly sensitive environments. Clauses 274 and 275 should be deleted so that councils can consider the sensitivity of the receiving environment or any significant adverse effects on aquatic life when making decisions on applications for wastewater and stormwater consents. The wording of clause 273 sub clauses (2) and (4) should be revised so that both wastewater and stormwater conditions can be more restrictive but not less than the applicable environmental performance standards.

In addition, we share the Commissioner's concerns in relation to changes to the RMA's hierarchy and agree that wastewater and stormwater operational performance standards made under the Water Services Act are considered as National Environmental Standards under the RMA. This will avoid a confusing and complicated dual system of urban water quality being governed by the Water Services Act and rural water quality being managed by the NPS for Freshwater Management and NES for Freshwater under the RMA.

Greater Wellington recognises that sufficient investment and changes in engineering/technology are required for water services providers to improve discharges and receiving water quality. Achieving this step change is a medium- to long-term goal and WOs need to take steps over time to reach this objective. This objective is consistent with recommendations that have emerged through Greater Wellington's Whaitua programme, especially for Te Whanganui-a-Tara (https://www.gw.govt.nz/environment/freshwater/protecting-the-waters-of-your-area/whaitua-te-whanganui-a-tara/), and Te Awarua-o-Porirua (https://www.gw.govt.nz/environment/freshwater/protecting-the-waters-of-your-area/whaitua-te-whanganui-a-tara/). GW is confident that they reflect the long-term aspirations of our community and mana whenua.

Relationship with Mana Whenua/Māori

Our partnerships with our six mana whenua partners spans over a quarter of a century and over this time we've worked together in unique ways. These partnerships are important to us, as they stem from our obligations under Te Tiriti o Waitangi and recognise and support our partners in maintaining their role as kaitiaki (guardians) of their ancestral lands and waterways.

Māori have recognised roles and responsibilities as kaitiaki (guardians) of our natural resources. They work together with Greater Wellington to achieve our dual roles of sustainably managing and protecting natural resources for the benefit of current and future generations.

The Government states that Treaty obligations are upheld in the changes to the water regime. Māori have always asserted an interest in freshwater akin to ownership and that the current regime is not Treaty compliant in terms of allowing for an ownership interest, protecting the resource or retaining sufficient resource for Māori to enjoy economic benefit. This has been upheld by various jurisprudence through to the Supreme Court. We understand that Te Mana o Te Wai was an interim solution to provide Māori more say in the control of water while the ownership issue was worked through; so the removal of Te Mana o Te Wai and any reduction in regulation over water (however small) is arguably a step backwards, when the clock is ticking in terms of the health and size of the available resource.

It is likely that the proposed framework may diminish the ability for the Crown (through Councils and through these entities) to provide for Māori rights and interests in water (e.g. through a stake in ownership or water allocation rights and/or compensation). Additionally, the Bill should not restrict mana whenua from actively participating in the management and operational delivery of water services. It is our understanding that the Crown cannot 'outsource' its Treaty obligations to local government or to corporatised entities and neither can councils; the Bill needs to be clear that the Crown is the partner and will act as such. The Bill should also ensure all relevant Māori groups have a voice in the new system, not just settled iwi.

With this in mind, GW seeks to reintroduce Te Mana o Te Wai as a minimum to both the Taumata Arowai-the Water Services Regulator Act 2020 (under Subpart 8) and Water Services Act 2021 (under Subpart 9). In addition, as the term itself is defined and expanded on in the Wellington Region Regional Policy Statement, its removal causes confusion and additional compliance costs with the regional regulatory framework.

To protect and uphold Māori rights and interests pre-existing, and guaranteed in Te Tiriti o Waitangi, the Bill should also include an operative Treaty clause.

Wellington Regional Water Board Act 1972

This Act sets up the framework for GW's bulk water function and many other water-related rights and obligations. In addition, there is also a Wellington Regional Council (Water Board Functions) Act 2005 that provides for GW to have the right to install renewable energy infrastructure on land that was previously owned by the now disestablished Wellington Water Board and subsequently vested in GW.

GW submits that both of the above Acts need to be reviewed to ensure that any powers required by the new entity are transferred to it to enable it to take over the bulk water function. The above Acts should then be considered for amendment or repeal provided, however, that GW retains all land vested in it by the previous Wellington Water Board and the right to appropriately deal with that land. In the meantime, GW submits that these two Acts should not be amended or repealed by the Bill.

It should be noted that much of our water catchment land is being maintained to very rigorous ecological standards and as such represents some of the highest ecological value land in the Lower North Island. This is evidenced by Department of Conservation considering the Wainuiomata Water Collection Area as potential habitat for release of several critically threatened taonga species including kākāpo.

Greater Wellington wishes to be heard for its submission.

Nāku noa, nā

Daran Ponter
Chair