



Hamilton City Council Submission

**Local Government (Water
Services Preliminary
Arrangements) Bill**

**Parliament's Finance and
Expenditure Select Committee**

13 June 2024



**Hamilton
City Council**
Te kaunihera o Kirikiriroa



Improving the Wellbeing of Hamiltonians

Hamilton City Council is focused on improving the wellbeing of Hamiltonians through delivering to our five priorities of shaping:

- **A city that's easy to live in**
- **A city where our people thrive**
- **A central city where our people love to be**
- **A fun city with lots to do**
- **A green city**

The topic of this Council submission is aligned to all of Hamilton City Council's five priorities.

Council Approval and Reference

This Council submission was approved by Hamilton City Council at its extraordinary meeting that was held on 11 June 2024.

Submission # 767

Primary Matters

Hamilton City Council has five primary concerns which must be addressed to support the most effective and sustainable delivery of water services for Hamilton.

- 1. Workable stormwater definition required:** The definition of the stormwater network is ambiguous, inadequate, and presents major issues for both future water services CCOs and fit for purpose economic regulations. The definition needs to be amended to be clear, easily applied, and reflect both stormwater assets and stormwater management activities. Finding a workable definition will require more work. Hamilton City Council is happy to work with officials to do so.
- 2. Bespoke solutions are needed:** Applying the Watercare solution to Hamilton would result in a higher cost of borrowing and a more costly future than other options. We need the flexibility to respond to our specific challenges and not be constrained by the particular solution that has been found for Auckland. We seek locally empowered, innovative solutions, not a 'cookie-cutter' approach.
- 3. We need certainty:** To make the decisions needed to adopt a Water Services Delivery Plan we need certainty on the fundamentals of water services CCOs, including their intended statutory authority and power, the compliance and accountability framework, economic regulation, and tax status. We urge the Government to expedite decision-making on these matters to give us the certainty that we need to make sound decisions.
- 4. National funding is needed to deliver national benefits:** This reform adds costs when households and Council are under severe financial pressure. Water services reform is a national multi-generational issue, with national public health and economic impacts and benefits. There must be national funding to enable transition and to respond to the reforms.
- 5. The benefits of any rules and determinations must exceed the cost of compliance:** This Bill provides for further rules and determinations to be made. Both will impose costs on councils. It is essential that the benefits of any rules and determinations exceed the cost of compliance and provide value for money. Hamilton City Council seeks changes to the Bill to ensure this happens.

Introduction

6. Hamilton City Council welcomes the opportunity to make a submission to Parliament's Finance and Expenditure Select Committee on the **Local Government (Water Services Preliminary Arrangements) Bill**.
7. This submission is structured under the following key areas:
 - **Improving the Wellbeing of Hamiltonians**
 - **Part A – General Comments**
 - **Part B – Detailed Considerations**
 - **Specific Matters for Consideration**
 - **Further Information and Hearings**

Improving the Wellbeing of Hamiltonians

8. Hamilton City Council is the territorial authority that is responsible for providing the wellbeing of residents in New Zealand's fourth-largest city. It is the lawful provider of water services to its community and was the fastest growing city in the country last year.
9. Under the Local Government Act 2002, Hamilton City Council must fulfil its purpose to enable democratic local decision-making and action by, and on behalf of, communities; and to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.
10. Cost-effective provision of high quality, sustainable water services is critical to all wellbeing outcomes for our community.
11. Economically, Hamilton is one of the key drivers of the Waikato's economic success. Its proximity to two main seaports (Auckland and Tauranga), two international airports (Auckland and Hamilton), rail connections and distribution networks, the south Auckland industrial base and key state highways provide significant opportunities for trade.
12. The Waikato-Tainui Te Kauhanganui Incorporated is the principal constitutional and legally mandated local iwi authority, encompassing some 33 hapuu and 67 marae across several local authority boundaries. Waikato-Tainui takes on the wider governance focus for its people, its tribal culture, education, and social responsibility. Hamilton City Council and Waikato-Tainui work together to give effect to Te Ture Whaimana o Te Awa o Waikato – the Strategy and Vision for the Waikato River.
13. It is in this context that Hamilton City Council provides its submission to this Select Committee on the Local Government (Water Services Preliminary Arrangements) Bill. The Bill establishes the Local Water Done Well framework and the preliminary arrangements for the new water services system.

Part A – General Comments

14. This submission is in two parts – Part A being an overview of general comments which outline Council's position on Local Water Done Well and consideration of matters arising from the Local Government (Water Services Preliminary Arrangements) Bill, and Part B which considers specific clauses in the Bill.
15. Hamilton City Council strongly supports reform of the national water services sector, acknowledging the current model is unsustainable for councils and our communities.
16. We support this reform being led by Government, as successful reform is critical to New Zealand's public health, economic growth, housing provision and environmental sustainability.

17. Our communities work, travel and live across territorial and regional boundaries. Our primary raw water sources and discharge points are not constrained by territorial boundaries. Impacts on water quality and availability of resource in one council area have flow-on impacts to others.
18. Sustainable and cost-effective water services delivery is not a council issue, it is a national consideration.
19. Hamilton City Council recognises the benefits of aggregation of water services delivery across territorial authority boundaries. Almost a decade ago we invested millions of dollars in exploring a Council Controlled Organisation (CCO) delivery model which would have delivered \$480 million in efficiencies over 25 years if Hamilton, Waikato, and Waipa Councils were to operate water services as one network.
20. Political considerations saw that effort fail.
21. Hamilton ratepayers are now again faced with significant costs to explore this issue again, at the direction of Government.
22. Local Water Done Well is a much-needed reform of this sector but as a New Zealand issue it must be supported by national funding. It is unfair to expect Hamilton ratepayers to fund the lion's share of any regional solution to a national issue.
23. The previous Government's reform programme, and the direction indicated by this Government, is imposing greater regulatory and compliance costs on Council, at a time when ratepayers are already bearing the brunt of high inflation, high interest rates, increasing insurance costs and a cost-of-living crisis.
24. The previous Government's reform identified significant costs and stranded overheads for councils arising from the transfer of water services. It offered funding to address the financial risks our Council faces in funding and managing an organisation without a third of our current activity.
25. Our own analysis indicated that intended no-worse-off funding was \$20 million short of the transition and stranded overhead costs faced by our city.
26. The previous reform also centrally funded cross-council services through transition. Funding for the likes of digital services and workforce transition would have reduced the financial impact on ratepayers.
27. The costs of responding to Local Water Done Well are real and will be substantial. Government is yet to offer any funding to offset these costs. This will further impact on the already dramatic increase in rates for Hamiltonians that are provided for in our 2024-34 Long Term Plan.
28. The Local Government (Water Services Preliminary Arrangements) Bill and Government policy imposes the costs of the Water Services Delivery Plan, the costs of increased disclosure, the costs of paying for Commerce Commission oversight, and the costs for any intervention by the Minister. There will be further costs associated with establishing any new water services CCO.
29. In our view, it is essential that in considering this Bill the Select Committee addresses the intent of the Regulatory Review Agency and the approach by this Government to ensure any new requirements are absolutely necessary and are the most cost-effective approach to addressing any identified problems.
30. The Bill requires us to prepare a Water Services Delivery Plan within 12 months of this Bill's enactment that identifies our current state, ensures we meet all compliance and standards requirements, supports housing growth and urban development, and is financially sustainable.
31. This is a significant and costly task, yet we are advised by Government that key information we need to properly develop this plan will not be available until late in 2024, when a further Bill will detail options, tools, and models for councils.

32. In order to find the best outcomes for Hamilton we need to consider a range of possible future delivery options and potential partnerships with other councils. Yet at this stage we are still waiting for critical policy decisions and legislation that will shape what a Water Services Council-Controlled Organisation (WSCCO) looks like, their powers and authorities, and the way in which councils relate to them.
33. Key issues include the statutory powers and authorities of a waters CCO, the ability to access property, control connections, make use of bylaws (or not), manage trade wastes, act as a requiring authority under the Resource Management Act and Public Works Act, the charging mechanisms that will be available to a WSCCO, and the taxation status of a WSCCO.
34. These are material matters in relation the legal ability of a waters CCO to undertake functions currently undertaken by the Council. They are also material matters in relation to the cost-effectiveness of alternative delivery models.
35. A change in the tax status of delivery of water services would increase costs significantly, with no benefit to ratepayers or water users.
36. Legislative clarity is needed quickly to support the decisions that councils will need to make as they prepare their Water Services Delivery Plans. We urge the Government to expedite resolution of these issues and provide clarity as soon as possible.
37. Hamilton City Council provides high quality drinking water, wastewater, and stormwater services to more than 180,000 residents and thousands of visitors to Hamilton every day. We're committed to protecting our environment, supporting public health, and enabling sustainable growth, while meeting our regulatory responsibilities.
38. Through Local Water Done Well, we will continue to seek the best (financial and non-financial) sustainable outcomes for the communities of Hamilton now and for the future.
39. Any transition must prioritise the health of the awa and Hamilton's role in implementing Te Ture Whaimana and cater for Hamilton's growth needs.
40. But this transition will come at a cost, and it is not a cost which should fall unreasonably and unfairly on the shoulders of Hamilton ratepayers.
41. We urge this Government to recognise the national benefits of this reform and take appropriate steps to ensure the costs are equitably shared by all who will benefit from it.

Part B – Detailed Considerations

42. In responding to Local Water Done Well and the considerable challenges that Hamilton faces Hamilton City Council is seeking to ensure that waters are delivered in a way that:
 1. Provides the best (financial and non-financial) sustainable outcomes for the communities of Hamilton now and for the future.
 2. Supports the health of the awa and Hamilton's role in implementing Te Ture Whaimana.
 3. Responds to and caters for Hamilton's growth needs as identified in Hamilton's growth strategy.
 4. Realises the benefits of a boundaryless approach across the wider metro area / Future Proof sub-region, supporting the best land use, transport, development and sustainability outcomes.
 5. Provides a stable and secure long term decision-making environment that can make sound investment decisions for very long-life infrastructure.
 6. Ensures that all environmental, public health, and economic regulatory compliance requirements are met.
 7. Ensures commitments and obligations to iwi and hapū are met.

8. Creates the conditions necessary to build, attract, develop, and sustain the highly skilled workforce needed to deliver water services.
 9. Ensures that Hamiltonians have influence in ownership and governance decisions proportionate to the size and nature of the City's population, assets, and needs.
 10. Recognises Hamilton's role and contribution to the region and the benefits of regional action.
43. Hamilton City Council also seeks to ensure that:
1. Change follows the most logical, efficient, cost effective, and lowest risk pathway to realise the benefits.
 2. The community clearly understands any change.
44. Council considers that the Bill as introduced is a significant step towards the outcomes that it is seeking to achieve, but it is only a first step, and we urge the Government to progress at pace the next phase of its Local Water Done Well Reform. There are many fundamental questions that are still to be answered in relation to the tools that will be available to address the waters challenges that we face. Speedy clarification of the tools and policy environment for waters entities is crucial if we are to deliver the outcomes we seek.
45. Council generally supports the Bill as introduced. We support the purpose of the Bill, the broad framework of the proposed Water Services Delivery Plans, the circumstances in which the Minister for Local Government may consider the appointment of a Crown facilitator or Crown waters specialist, and the step towards economic regulation through the Commerce Commission.
46. There are a number of detailed matters where Hamilton City Council has concerns and seeks changes to the Bill. They are set out in the following table: **Specific Matters for Consideration**.
47. One of the key issues that we have identified is the definition of the stormwater network. This is a significant technical issue with considerable consequences.
48. Whilst Council supports the policy intent of being able to effectively integrate the management and funding of all three waters, we remain very concerned over the ability to sensibly and practically define the stormwater network. The piped stormwater network is relatively easy to identify. But what surrounds that is considerably more difficult.
49. Over years streams have been both piped as part of development and daylighted as part of more modern approaches to urban development and stormwater management. Which parts constitute the stormwater network as defined in the Bill?
50. Council's parks and reserves are key parts of our communities' open space and recreation facilities; they also perform critical stormwater management functions. Roads are critical both in terms of their impact on generating stormwater runoff and the connections they provide to both the piped and un-piped flow of stormwater. Are they part of the stormwater network under the Bill's definitions?
51. Most modern urban developments include significant stormwater detention facilities, wetlands, tanks, and dams. Some of these become Council property when the development is complete, others remain in private ownership. Functionally these are critical to the effective management of stormwater and flooding risks, but these are excluded from the definition of stormwater in the Bill.
52. Our Council urges the Select Committee to carefully consider stormwater, the way stormwater networks are defined and the way in which stormwater fits within the regulatory framework. We submit that the management of stormwater is a fundamentally different issue than the provision of drinking water and the collection and treatment of wastewater. This needs to be reflected in the statutory framework.
53. Hamilton City Council has not addressed the specifics of the provisions relating to Watercare, they are matters for Watercare, Auckland Council, and the people of Auckland to consider.

54. However, we note there are aspects of the proposed Watercare approach that would be concerning if they were to become entrenched as the national model. In particular, we are concerned to ensure that any approach to the potential liability for debts does not result in a more difficult and more costly borrowing environment for any other new waters entity.
55. We also want to ensure that disclosure and monitoring is cost effective and not burdensome. We need to ensure that any changes to delivery arrangements deliver better outcomes – not more costly solutions for our ratepayers. Hamilton City Council is anxious to work with the Government to ensure that the next step in water reform does indeed deliver benefits for our communities.

Specific Matters for Consideration

56. The following table sets out the specific matters that Hamilton City Council would like to see addressed in the Bill.
57. Hamilton City Council would welcome the opportunity to talk with the Finance and Expenditure Select Committee about the matters raised in this submission.

| Section of the Bill | Issue | Requested Change |
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| 5 - Interpretation Stormwater Network | The definition of a stormwater network is ambiguous and arguably includes roads and other Council infrastructure such as parks and reserves which provide a stormwater function in addition to their core purpose. Amongst other things, roads, parks, and reserves are <i>infrastructure and processes that are used to collect, treat, drain, reuse, or discharge stormwater in an urban area; and are owned by, or operated by, for, or on behalf of a territorial authority.</i> | Develop a clearer and unambiguous definition of stormwater networks and stormwater assets. This is critical for both clarity of the scope of a Water Services Delivery Plan, the scope and impact of reporting requirements and the impact of economic regulation. |
| s8(1)(b)(i) to (iv) | In addition to the factors listed it is critical that the communities served by a Water Services Delivery Plan have security around the ability to take the amount of water necessary to meet their needs for drinking water, discharge the amount of treated wastewater effluent they will generate, and discharge stormwater into the receiving environment. Financial sustainability is not sufficient if there is no security of supply or ability to discharge. Security of supply and ability to discharge depends on being able to secure consents to take water and discharge into water bodies. Both may be compromised by over-allocation of water bodies. Security of supply and ability to discharge should be a key factor in the design of any economic regulation and will be a major driver of future costs. | Add to s8(1)(b) as follows (or similar): (v) ensures security of water supply and security in the ability to discharge from wastewater and stormwater networks. |
| s8(1)(b)(iv) | A territorial authority's Long Term Plan currently sets out only the financial aspects of the territorial authority's plans to respond to housing and urban | Amend ss(1)(iv) to refer to either a Future Development Strategy or to the growth and development provided for in the relevant District |

| Section of the Bill | Issue | Requested Change |
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| | development pressures, and large infrastructure investments. For growth councils a more credible link may be to a Future Development Strategy prepared under the National Policy Statement for Urban Development. Alternatively, a reference could be made to the growth and urban development provided for in the Territorial Authority's District Plan. Because a Future Development Strategy relates to the whole of an urban area, referring to it is a more helpful way of ensuring that the investment necessary to support growth is provided for. | Plan. |
| s11(e) | Two of the key challenges facing growth councils are the very large capital and operational expenditure that is needed to support growth and development, and the timing of growth-related capital works needed to enable development. The scope of a Water Services Delivery Plan needs to include a clear reference to these issues so that there can be confidence in the ability to service growth. | Amend ss(e) by adding: <i>and; (iii) to ensure infrastructure required to support housing growth and urban development can be delivered:"</i> |
| s11(h) | The term "asset management approach" is ambiguous and not a term commonly used in the sector. | Either clarify the term in the Bill or ensure that it is suitably defined and clear in any rules established by the Secretary. |
| s13(1) | The proposed period covered by a Water Services Delivery Plan starts in the 2024-25 financial year. The Plans are due to be adopted by Councils by 30 June 2025. By that time the 2024-25 financial year will be over. | Amend s13(1) so that the start year for Water Services Delivery Plans is 2025-26. |
| s14 | The Bill imposes a new requirement on territorial authorities. The preparation of a Water Services Delivery Plan will be a new, unfunded requirement that imposes further costs on ratepayers. Rules that may be made by the Secretary have the potential to add further costs, or to impose requirements that have not been anticipated by territorial authorities. Rules may also require particular approaches (for instance in cost allocation) that may require considerable work (or re-work) by territorial authorities in order to comply. In order to minimise the impact on ratepayers it is critical that any rules made by the Secretary are specified early enough for councils to respond to, carefully plan work, and avoid any | Establish a deadline of 31 October 2024 for the Secretary to make rules in relation to Water Services Delivery Plans. |

| Section of the Bill | Issue | Requested Change |
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| | omissions in, or rework of, draft plans. Receiving a new set of requirements late in the period in which plans must be produced would add further costs and risks to the preparation of Water Services Delivery Plans. | |
| s14(3) | <p>As noted above, the Bill imposes a new requirement on territorial authorities. The preparation of a Water Services Delivery Plan will be a new, unfunded requirement that imposes further costs on ratepayers. In keeping with the Government's commitment to reducing red tape and ensuring that regulations are fit for purpose it would be appropriate to include a requirement that any rules made by the Secretary are reasonable and that the cost of complying with the rules is outweighed by the benefits of implementing the rule.</p> <p>Given the potential impact of rules that can be made by the Secretary, the costs that they may impose on ratepayers, and the number of territorial authorities, it is not unreasonable to expect that the Secretary would be required to consult with those who will be impacted by the rules, not just with representatives who are identified by the Secretary. Hamilton City Council would expect to be consulted about such key matters.</p> | <p>Amend s14(3) read:</p> <p><i>(3) Before making a rule, the Secretary must:</i></p> <p><i>(i) consult the organisations required to produce Water Services Delivery Plans and also consult any person or organisation that the Secretary considers to hold views that are representative of the views held, or may be held, in the local government Sector; and</i></p> <p><i>(ii) be satisfied that any additional costs imposed on territorial authorities through a rule are reasonable and are outweighed by the benefits of implementing the rule.</i></p> |
| S20 and s23 | <p>The appointment of a Crown facilitator or a Crown water services specialist may be a valuable step in meeting the purposes of the Bill, but such appointments are interventions in the legitimate democratically elected authority of territorial authorities and should not be taken lightly. A Crown water services specialist would have significant powers, akin to those of a Crown manager under the Local Government Act 2002. There would be significant costs associated with the work of either a Crown facilitator or a Crown water services specialist. Given the costs associated with such appointments, and the fact that these costs are borne not by the Minister, but by the territorial authorities to which an appointment is made, it is reasonable to expect that before making an appointment the Minister must be satisfied that the</p> | <p>Add to s20(2)(b)</p> <p><i>and</i></p> <p><i>(c) the Minister is satisfied that the benefits of making the appointment exceed the costs of the appointment.</i></p> <p>Add to s23(2)</p> <p><i>and</i></p> <p><i>(e) the Minister is satisfied that the benefits of making the appointment exceed the costs of the appointment.</i></p> |

| Section of the Bill | Issue | Requested Change |
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| | benefits of the appointment exceed the costs and that the expenditure represents value for money for the authorities who are paying for the appointments. | |
| s21 and s24 | To avoid arguments, the appointment of a Crown facilitator, or Crown water services specialist to a group of councils needs to include that way in which their charges will be allocated to each of the councils in the group. The allocation of costs should not be the subject of debate or argument between the authorities to which appointments have been made. | <p>Add to s21(2)</p> <p>(f) the way in which the costs of the Crown facilitator will be allocated between the territorial authorities to which the Crown facilitator has been appointed.</p> <p>and s24(2)</p> <p>(f) the way in which the costs of the Crown water services specialist will be allocated between the territorial authorities to which the Crown water services specialist has been appointed.</p> |
| s35, s37(2) | Hamilton City Council generally supports the shift to economic regulation, provided it is cost-effective and does not impose a new and costly burden on ratepayers for little or no benefits. Hamilton City Council is particularly concerned to ensure that any additional regulation is fit for purpose, cost effective, and necessary. | <p>Add to s35 a new subsection and renumber existing ss (3) to (8) as necessary.</p> <p><i>new (3) The Commission must be satisfied that the benefits arising from the determination will exceed the costs of compliance.</i></p> <p>Add to s37(2)</p> <p><i>and must have regard to the costs that the determination will impose on the specified entities and be satisfied that the benefits arising from the determination will exceed the costs of compliance.</i></p> |
| s37(3)(k) and (l), s37(4), and s38(3) | <p>Hamilton City Council is particularly concerned that the scope of potential regulation by the Commerce Commission extends well beyond waters and across the broad sweep of territorial authority operations. Territorial authority reporting is already subject to considerable regulation and complex accounting and reporting standards. These sections add to the that.</p> <p>Section 37(3)(k) and (l), s37(4), and s38(3) opens the door to de facto economic regulation of all local government activity. Hamilton City Council submits that this is</p> | <p>Amend the Bill to ensure that the ability of the Commerce Commission to make a determination that impacts on the nature, level and extent of information relating to non-waters activities of local authorities is strictly limited and provides no scope to increase the complexity of reporting, or duplicate reporting that may be required by the Secretary, or under other regulations.</p> <p>This could include:</p> |

| Section of the Bill | Issue | Requested Change |
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| | <p>beyond the purpose of the Bill, is a step too far, and is likely to be expensive and risk considerable duplicative effort by territorial authorities. These sections take the role of the Commerce Commission into the core reporting requirements of local authorities, which are already complex and heavily regulated.</p> <p>Section 38(3) and elsewhere makes references to “all business activities”. This is ambiguous, in particular given that it is a reference to undertakings that are not ‘businesses’ but rather the core regulatory and administrative and service provision responsibilities of territorial authorities. Any reporting requirements for the parts of a Council’s operation that is not waters it would be better to talk about “activities”.</p> <p>Equally, it is probably both incorrect and unhelpful to describe the core regulatory, administrative and other functions of territorial authorities as the “supply of goods or services”. They are certainly not goods and services of the nature that are covered by the Consumer Guarantees Act or other fundamentals of sale and purchase arrangements.</p> | <ul style="list-style-type: none"> • A requirement to consult the Secretary and ensure that any determination does not duplicate other requirements or add undue new requirements; • Limitation on the scope of s38(3) in relation to non-waters activity; and • Consideration of the extent to which disclosure or reporting needs to be continuous, or periodic. <p>Amend s38(3) and all other occurrences to replace “all business activities” with “other activities”.</p> <p>Consider further amendment to s38(3) and other sections in relation to whether it is appropriate or helpful to describe the activities of territorial authorities as the “supply of goods or services”.</p> |

Further Information and Hearings

58. Should Parliament’s Finance and Expenditure Select Committee require clarification of the submission from Hamilton City Council, or additional information, please contact **Andrew Parsons** (General Manager Infrastructure and Assets) on **07 838 6896** or **021 791 612**, or email Andrew.Parsons@hcc.govt.nz in the first instance.
59. Hamilton City Council representatives **do wish to speak at the hearings** for the Local Government (Water Services Preliminary Arrangements) Bill.
60. We would welcome the opportunity to have further discussions around the key areas of this submission with Parliament’s Finance and Expenditure Select Committee.

Yours faithfully



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