

# Office of the Mayor



19 June 2024

The Chair  
Finance and Expenditure Committee  
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Tēnā koe Mr Chair

## **DUNEDIN CITY COUNCIL SUBMISSION: LOCAL GOVERNMENT (WATER SERVICES PRELIMINARY ARRANGEMENTS) BILL**

### **INTRODUCTION**

1. The Dunedin City Council ("Council") thanks the Finance and Expenditure Committee for the opportunity to provide a submission on the Local Government (Water Services Preliminary Arrangements) Bill (the "Bill"). Council acknowledges the Bill is the second bill in a three-part legislative package implementing the Government's Local Water Done Well plan.
2. As a general comment, Council notes the short timeframe to respond to the Bill given the importance of the matters involved. Given the timeframe, Council has not had an opportunity to fully consult with its communities.
3. Council acknowledges that more comprehensive legislation is expected later this year to complete the Local Water Done Well legislative package (Bill No.3). It is difficult therefore for Council to fully consider the current Bill and its full impact without the full legislative detail being available. Council encourages the Government to adopt a more generous timeframe for submitting on Bill No.3 to enable participation by key stakeholders, and for Council to consider feedback genuinely and meaningfully.
4. Council would like to acknowledge and thank the Government for listening to Council's earlier submissions relating to the now repealed Affordable Water Reform model, specifically around ownership and local influence. Council is generally supportive of the enabling approach under Local Water Done Well. Council would now like to set out some areas of concern relating to the Bill.

### **SECTION 1 –WATER SERVICES DELIVERY PLANS**

5. The Bill requires territorial authorities, either on their own or jointly, to submit a Water Services Delivery Plan (WSDP) no later than one year after the Bill's enactment subject to an extension being granted. The following paragraphs set out Council's concerns and recommendations in relation to the content of and timing for WSDPs.

## **Content of WSDP**

6. The content of the WSDP appears extensive. For territorial authorities to provide the information requested, Council recommends further guidance is provided to specify the nature and level of detail sought, particularly in relation to the matters identified in the table of recommendations below.
7. The WSDP must demonstrate financially sustainable delivery of water services. Council submits that the definition of 'financially sustainable' in clause 5 of the Bill is not sufficiently clear. In particular, it is not clear whether 'long-term investment' referenced in part (a) of the definition relates to investment during the 10-year period covered by the WSDP or another period. In addition, 'all regulatory standards and requirements' referenced in part (b) of the definition requires further clarification, including whether this refers to current regulatory standards and requirements only, or both current *and* future regulatory standards and requirements.
8. Given how important the concept of 'financially sustainable' appears in the Bill, it is essential that Council understands what exactly this entails and what other elements are required to show proof of being 'financially sustainable' e.g., insurability of assets.
9. At this stage how Council will meet the requirements of Clause 11(1)(j-n) is unknown. Given Council has not yet received the detail of Bill No.3 (which we understand will outline additional options, tools, and models available to councils for the delivery of water services, as well as providing new funding and financing arrangements), it is difficult to predict the information that is required in (j) – (n). Will there be extra government resources offered to help meet these requirements and to fund the WSDP development?
10. Some territorial authorities may be under substantial pressure to complete a WSDP. Council does not want to find itself in a position where a Crown water services specialist is appointed to facilitate or prepare a WSDP, and direct Council to adopt it. To avoid this, clarification of the above points in the Bill regarding the content of WSDPs along with any additional guidance would be appreciated. Alternatively, a WSDP template would help clarify what is required and help to expediate WSDPs, avoiding any delays when submitting the WSDP to the Secretary for acceptance.
11. Council notes under clause 14 of the Bill that the Secretary for Local Government has broad powers to make rules in relation to WSDPs. Council encourages the Committee to consider appropriate qualifications of those powers, including limiting the time available for making rules to allow councils to comply with statutory requirements.

## **Timing and Duration of WSDP**

12. As stated above, a WSDP needs to be submitted to the Secretary no later than one year after the date that the Act comes into force, or later if an extension is granted under the mechanism provided for in the Bill. Council understands that anticipated enactment of the Bill is August 2024.
13. Council acknowledges that other territorial authorities intending to adopt alternative models for water services under Local Water Done Well (as opposed to adapting current operations) may prefer more time to prepare their WSDP. At this stage Council envisages that the current one-year time frame to submit a WSDP is appropriate and will efficiently

take in Council's long term planning process in 2025. However, this is subject to resourcing and addressing the concerns listed above in relation to the content of the WSDP.

14. Council question if there is a drafting error at clause 17(3)(b)(iv) of the Bill where "exemption" should possibly refer to "extension"?
15. Council also notes there is a time limit set for a territorial authority requesting an extension for submitting a WSDP. However, the Minister does not have a timetable for granting an extension, nor does the Secretary about acceptance of a WSDP. To provide clarity and certainty to councils, the inclusion of timeframes for both would be beneficial.
16. Council notes that clause 13(1) of the Bill requires a WSDP to cover a period of not less than 10 consecutive financial years. Council is supportive of this wording to allow territorial authorities the flexibility to choose a time period from 10 years. Council acknowledges that some may choose to prepare a WSDP for 30-years in line with their Infrastructure Strategy and Future Development Strategy. However, others may prefer a 10-year period to show financial sustainability through their Long Term Plan.
17. Council is aware that other organisations, including Taituarā, may submit in support of an amendment to clause 13(1). Council does not support the amendment sought by others and urges the Government to make no amendments to clause 13(1) of the Bill.
18. Council further notes that the status of the WSDP after it has been accepted by the Secretary for Local Government is unclear. Council submits that further clarity is required in the Bill on:
  - a. whether an accepted WSDP creates binding obligations on a territorial authority;
  - b. the implications in the case of any inconsistency between an accepted WSDP and another territorial authority document or plan prepared in accordance with a statutory requirement (for example, a territorial authority's Long Term Plan);
  - c. any specific audit requirements for the WSDP; and
  - d. whether an accepted WSDP can be amended.

19. Council Recommendations:

Bill Clause	Commentary	Recommendation
Clause 5 Definition of 'financially sustainable'	The definition is not sufficiently clear. All elements required to show proof of being 'financially sustainable' must be understood.	The Council <b>recommends</b> that the definition of 'financially sustainable' be amended to clarify the intended meaning of 'long-term investment', 'all regulatory standards and requirements', and specific elements required to show proof of being 'financially sustainable'.
Clause 8 Requirement to prepare WSDP	A council's plans for housing growth and urban development are typically specified in planning documents such as a district plan and/or future development strategy. The funding to enable those plans is provided for in the long-term plan.	The Council <b>recommends</b> clause 8(1)(b)(iv) should be amended by deleting 'specified' and inserting 'reflected' in its place.

Clause 11 Contents of WSDP	Clause 11(1)(a) could be clearer given the information requested through the rest of Clause 11 is likely to comprehensively cover the current state of water services networks.	The Council <b>recommends</b> that Clause 11(1)(a) be modified as information could be duplicated.
	<p>Clause 11(1)(d) does not clearly outline the level of detail expected from councils in the WSDP. For example, in relation to comply with environmental regulatory requirements, councils will need clear direction on whether to include a breakdown, for example, of compliance with individual consent conditions? or whether environmental compliance should be recorded in another, aggregated way?</p> <p>In addition, clause 11(1)(d) does not specify the regulatory requirements intended to be in scope of this requirement. There are multiple regulatory systems that councils' water services activities are (or may be) subject to. These regulatory systems include (but are not limited to): drinking water regulations, environmental regulations, health and safety at work regulations, building regulations, dam safety regulations, and hazardous substances regulations. It is also not clear whether the requirement in clause 11(1)(d) applies only to current regulatory standards and requirements only, or to both current <i>and</i> future regulatory standards and requirements.</p>	The Council <b>recommends</b> further detail is provided in this clause or in associated guidance, including clarification on the level of detail about compliance required to be included in the WSDP and the regulatory systems intended to be in scope.
	Clause 11(1)(h) - it is not clear what the term "asset management approach" means.	The Council <b>recommends</b> further detail is provided in this clause or in associated guidance.
	Clauses 11(1)(j) - (m) would require new, original thinking (and appropriate resourcing) to complete.	The Council <b>recommends</b> that additional resources are provided to councils if needed to support them to meet the 12-month timeframe.
Clause 13 Period covered by WSDP	The time period provided in this clause is appropriate.	The Council <b>recommends</b> clause 13(1) is retained without change.
Clause 14 Secretary may make rules in relation to water services delivery plans	The Secretary for Local Government has broad powers to make rules in relation to WSDPs.	The Council <b>recommends</b> the Committee considers changes to clause 14 to appropriately qualify the powers of the Secretary.
Clause 17 Minister may grant extension to deadline for submitting water services delivery plan	There is a possible drafting error at clause 17 (3)(b)(iv) where "exemption" should perhaps refer to "extension"?	The Council <b>recommends</b> that the Committee review clause 17 (3)(b)(iv).
	There is no timetable on the Minister's granting of an extension.	The Council <b>recommends</b> that a timeframe for the Minister to grant an extension is set.
Clause 18 Secretary accepts water services delivery plan	There is no timetable on the Secretary's consideration and acceptance of WSDPs.	The Council <b>recommends</b> that the Secretary advise the territorial authority or joint arrangement of a decision to accept a plan or to direct amendments within two months of receipt.

Part 2 Subpart 1 WSDPs	The status of the WSDPs after acceptance is unclear.	<p>The Council <b>recommends</b> the Committee amends the Bill to clarify the status of a WSDP after acceptance, including:</p> <ul style="list-style-type: none"> <li>• whether an accepted WSDP creates binding obligations on a territorial authority;</li> <li>• the implications in the case of any inconsistency between an accepted WSDP and another territorial authority document or plan prepared in accordance with a statutory requirement;</li> <li>• any specific audit requirements for the WSDP; and</li> <li>• whether an accepted WSDP can be amended.</li> </ul>
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## SECTION 2 – FOUNDATIONAL INFORMATION DISCLOSURE REQUIREMENTS

20. Council is generally supportive of the establishment of a framework for economic regulation within the water services industry. Council further acknowledges the need for broad information disclosure to enable such regulation particularly in a Water Services Council Controlled Organisation (WSCCO) context.
21. However, Council does question whether the democratic regime of elections as a backstop regulatory function is in fact more powerful than a separate regulatory regime, when a model retaining more control by a territorial authority is utilised as opposed to a WSCCO type model? Council would encourage the Government to carefully consider the appropriate level of regulation to be applied to councils that contemplate continuing to deliver water services in house.
22. Council would also like assurances as to confidentiality where disclosure relates to commercially sensitive information particularly in relation to third party information in contracts and transactions with related parties. Council would like further thought by the Committee as to the extent of detail required in clause 37(3)(d) and (e) of the Bill and accompanying public disclosure and use of this information by the Commerce Commission.
23. Council Recommendations:

Bill Clause	Commentary	Recommendation
Clause 37(3)(d) and (e) – Contents of Determination	Council is concerned that extensive disclosure requirements may expose commercially sensitive information with third parties e.g., contracts and transactions with related parties.	The Council <b>recommends</b> further consideration is made as to some of the detail required in clause 37(3) of the bill especially subclauses (d) and (e).

## SECTION 3 – WATER SERVICES COUNCIL-CONTROLLED ORGANISATIONS

24. Council notes that the Bill provides an alternative decision-making process (as opposed to current legislative requirements) if Council elects to establish, join, or amend a WSCCO.
25. While Council appreciates the option to utilise a model with a potentially simpler process,

there is still not enough detail on other elements relating to the WSCCO especially relating to financial considerations.

26. Council notes that much focus currently is on the WSCCO as a potentially preferred model by the Government. Council is opposed to this type of model being forced on it as there could be other cooperative type models that can realise better economic efficiencies in actioning Council's delivery programme. Council certainly hopes that there is much clearer direction particularly relating to financing ahead, not only for the WSCCO model but also other alternative cooperative type arrangements.
27. Council is strongly of the view that any legislation proposed is substantively 'enabling' rather than being mandatory in nature, as to Council's options under the Local Water Done Well plan. This would also be contrary to the underlying reasons for repeal of the recent Affordable Water Reform legislation. Ultimately, Council is of the view that there is no need to adopt a more complex arrangement if this is not needed to achieve efficiencies in providing water services. Flexibility is crucial to allow Council to pursue options that are most efficient.

#### **SECTION 4 – AMENDMENTS TO WATER SERVICES ACT 2021: TE MANA O TE WAI HIERARCHY OF OBLIGATIONS**

28. Council supports, in principle, the Te Mana o te Wai hierarchy of obligations as an overarching framework for freshwater management. Council does not support the proposed amendments to the Water Services Act 2021 included in this Bill, which would remove the need for Taumata Arowai to have regard to the Te Mana o te Wai hierarchy of obligations when making wastewater environmental performance standards. Council is concerned that excluding consideration of the hierarchy of obligations from the process for making wastewater environmental performance standards could mean the resulting standards do not adequately protect the health of freshwater and associated values, including Mana Whenua values and drinking water values.
29. The DCC understands the Government intends to review the National Policy Statement for Freshwater Management 2020 (NPS-FM) in the near future. Council has previously made submissions in Otago regional policy and plan-making processes on the challenges that may arise for the DCC as water services provider due to the application of the hierarchy of obligations. The DCC would recommend that any updates to the NPS-FM retain the hierarchy of obligations but with appropriate modifications to ensure large public drinking water suppliers like the DCC are enabled to continue providing water supply for the health and wellbeing of communities, including growing communities.

30. Council Recommendations:

Bill Clause	Commentary	Recommendation
Clauses 100-102 – Amendments to Water Services Act 2021	Council is concerned that excluding consideration of the hierarchy of obligations from the process for making wastewater environmental performance standards could mean the standards are not optimised to protect the health of freshwater and associated environmental values, Mana Whenua values, and drinking water values.	The Council <b>recommends</b> clauses 100-102 of the Bill are deleted.

## **SECTION 5 – GOVERNMENT SUPPORT**

31. As referred to elsewhere in this Submission, Council would like to know what other support will be available to enable Council to prepare a compliant WSDP and meet other requirements such as information disclosure requests going forward? The Bill states that there will be “greater oversight and support from the Government” at page two of the Explanatory Note. However, it is still unclear whether there are any additional resources available from Central Government to achieve the implementation of Local Water Done Well, other than the potential use of the remaining transitional funding from earlier reform.
32. Council would like the legislation to be ‘enabling’ and provide flexibility to pursue the most efficient options. For example, if a council was to pursue different delivery options for different water services functions, both within and across districts, flexibility to enable this would need to be provided.
33. Council is pleased to see that clause 33(1) of the Bill identifies three different entities for delivery of water services, including ‘a territorial authority that delivers water services’. Council would recommend the descriptor in clause 33(1) is adopted as the definition of ‘water services provider’ in future legislation to enable the flexibility sought.
34. Council wants to avoid any form of imposed Ministerial intervention. Any information or resource to ensure Council is as well prepared and as compliant as possible to avoid intervention would be appreciated.

## **SUMMARY**

35. It is difficult for Council to fully consider the Bill given the full legislative picture is still unknown. Without further detail and clarification, including on the definition and elements required to prove being ‘financially sustainable’, further analysis of options to pursue is challenging.
36. Further guidance and clarity are required relating to actual content of the WSDP. This will ensure the WSDP is compliant and not subject to further delays due to amendment requests or imposed Government intervention.
37. Council is currently supportive of the timing outline in the Bill as to adoption of the WSDP. However, it would be appreciated if the Committee can consider amendments to require fixed time periods for granting extensions, as well as consideration and acceptance of the WSDP.
38. Council does not support any amendment to clause 13(1) of the Bill.
39. Council would like further reassurance that the disclosure of commercially sensitive information as provided in the Bill is managed appropriately.
40. Council asks the Committee to amend the Bill to clarify the status of a WSDP after acceptance.
41. Council requests the legislative path to Local Water Done Well to be ‘enabling’ rather than of a mandatory nature. There also needs to be further detail on other cooperative models that may be equally or more efficient than the WSCCO model currently being discussed.

Flexibility must be preserved.

42. Council does not support the amendments proposed to the Water Services Act 2021 removing the need for Taumata Arowai to have regard to the Te Mana o te Wai hierarchy of obligations when making wastewater environmental performance standards.
43. Further consideration of additional Government resources should be available to councils to adopt and implement a WDSP and meet any resulting obligations.

## **CONCLUSION**

44. The Council thanks the Committee once again for the opportunity to provide a submission on the Bill.
45. The Council requests the opportunity to make an oral submission to the Committee.

Kā mihi,



Jules Radich  
**MAYOR OF DUNEDIN**



Jim O'Malley  
**COUNCILLOR**  
**CHAIR OF INFRASTRUCTURE SERVICES COMMITTEE**