

File No: 25 12 05
Document No: **25530225**
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16 February 2023

Finance and Expenditure Committee
Parliament Buildings
Wellington

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Tēnā koe,

Waikato Regional Council Submission on the Water Services Legislation Bill

Thank you for the opportunity to submit on the proposed Water Services Legislation Bill. Please find attached the Waikato Regional Council's (the Council's) submission, endorsed by the Council's Submissions Subcommittee on **14 February 2023**.

Should you have any queries regarding the content of this document please contact Annika Hamilton, Policy Advisor, Policy Implementation directly on (07) 859 0990 or by email Annika.hamilton@waikatoregion.govt.nz.

Ngā mihi nui,

A handwritten signature in blue ink, appearing to read "Tracey May", followed by a period.

Tracey May
Director Science, Policy and Information

Submission from Waikato Regional Council on the Water Services Legislation Bill

Introduction

1. We appreciate the opportunity to make a submission on the Water Services Legislation Bill.
2. Waikato Regional Council (the Council) recognises the importance of water services as a fundamental element of human wellbeing. The Council acknowledges the overall objective of the three waters reform to deliver water services in a sustainable and resilient manner that seeks to mitigate the effects of climate change and natural hazards.
3. The Council also recognises the objectives of the Bill to establish regulatory functions and powers to enable water services entities to regulate water services in place of current arrangements administered by territorial authorities. We however note in our submission that there may be several aspects of the Bill that have an impact on regional councils, it is these matters to which the submission is limited.
4. In summary, the Council's submission:
 - Supports the provisions in the Bill requiring engagement with regional councils but requests that any new roles or responsibilities for regional councils are accompanied by appropriate funding and implementation guidance.
 - Highlights the importance of aligning the provisions and outcomes of this Bill with the proposed resource management system reforms and future for local government reforms.
 - Recommends that the definition of 'stormwater network' in the Water Services Entities Act 2022 is amended to include an 'artificial watercourse'. It is also recommended that 'artificial watercourse' is defined in the Bill to make it clear that natural receiving environments are not captured in the definition of 'stormwater network.'
 - Highlights that regional councils have obligations under the National Policy Statement for Freshwater Management 2020 (NPS-FM) and National Environment Standards for Freshwater 2020 (NES-F). We consider it will be important for 'stormwater network' to be clearly defined to ensure there is no conflict with the functions and obligations of regional councils under these freshwater policies.
 - Recommends that the Resource Management Act 1991 is not amended to include section 95H because this section could result in a water services entity being notified for most resource consent applications.
 - Recommends that clause 257(2) stipulates what 'working with' a water services entity on stormwater management plans will involve.
 - Recommends clause 200 is updated to remove the word 'desirable' as this clause currently provides water services entities with broad powers to carry out work.
 - Highlights the additional resourcing that may be required to have a relationship agreement in place with the Water Services Entity by July 2024.
 - Recommends that the Bill incorporates a requirement for water services entities to have regard to the National Adaptation Plan and Emissions Reduction Plan.
5. We look forward to future consultation processes to incorporate the proposed amendments into relevant statutes and would welcome the opportunity to comment on any issues explored during their development.

Submitter details

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Engagement requirements

We support the requirements set out in the Bill for the board to engage with regional councils on the development of controlled drinking water catchment management plans, stormwater management plans, stormwater network rules and the compliance and enforcement strategy.

We request that any new roles or additional responsibilities for regional councils are accompanied by appropriate funding and implementation guidance.

In the event of any potential transfer of charging powers to regional councils, we would expect these matters to be thoroughly discussed and properly consulted on with local government.

6. We support the engagement requirements set out in clause 22 which amends the Water Services Entities Act 2022 to include the following sections:
 - Clause 232(5) requiring the board to engage with regional councils on the development of catchment management plans.
 - Clause 247(1)(a) relating to engagement on the assessment of water services.
 - Clause 257(1)(a) requiring engagement on stormwater management plans.
 - Clause 262(1)(c) requiring engagement on stormwater network rules.
 - Clause 355(b) requiring engagement on compliance and enforcement strategies.

Whilst supportive of the engagement requirements we note that any new roles or additional responsibilities for regional councils must be accompanied by appropriate funding and implementation guidance. Any new government direction should avoid creating increased workloads for regional councils without appropriate funding and implementation support.

Alignment with other legislation

We highlight the importance for this Bill to align with other legislative reforms. We consider it will also be important to clearly address the hierarchy of obligations.

7. It is important for the provisions in this Bill to align with the proposed provisions and outcomes in the resource management system reform and future for local government reforms.
8. We also highlight the importance of addressing the hierarchy of obligations and the need to clearly establish how national policy statements, national environmental standards and regional coastal plans, regional plans and rules will align with the provisions under this Bill. Particularly as the resource management system reform has indicated these will be progressing through the National Planning Framework review, and that for a period of time local government is likely to be working in a

transition, and sometimes a dual, system. Clarity is required to connect the component part so the legislative framework works together.

Definition of 'stormwater network'

We recommend the Bill amends the definition of 'stormwater network' in the Water Services Entities Act 2022. The definition of 'stormwater network' should include an 'artificial watercourse'. We also recommend that 'artificial watercourse' is defined in the Bill. This will make it clear that natural receiving environments are not captured in the definition of 'stormwater network.' The Waikato Regional Plan provides a definition that could be used in the Bill to increase clarity.

We recommend using the following definition:

- Artificial watercourse: A watercourse that contains no natural portions from its confluence with a river or stream to its headwaters and includes irrigation canals, water supply races, canals for the supply of water for electricity power generation and farm drainage canals.

We also recommend that 'river' is defined in the Bill using the same definition provided in section 2 of the Resource Management Act 1991.

We highlight that regional councils have obligations under the National Policy Statement for Freshwater Management 2020 (NPS-FM) and National Environment Standards for Freshwater 2020 (NES-F). We consider it will be important for 'stormwater network' to be clearly defined to ensure there is no conflict with the functions and obligations of regional councils under these freshwater policies. Our preference is also for an approach that favours stormwater to be treated at source before it is discharged into the natural environment.

9. We recognise that the definition of 'stormwater network' is provided in the Water Services Entities Act 2022 and not this Bill. We also understand that 'green water services infrastructure' was included within the proposed definition of 'stormwater network' to ensure water services entities consider the wider stormwater system and catchments in the natural environment.
10. However, we consider that the definition of 'stormwater network' in the Water Services Entities Act 2022 will impact on the powers and functions provided for under this Bill. For example, the proposed subpart 2 (within clause 22) provides for the development of stormwater management plans by the water services entities and enables the board to make stormwater network rules.
11. We note that clause 43(2) of schedule 1 states that assets relating to the provision of stormwater services outside the urban area will not be transferred to the water services entity. However, we highlight that stormwater networks can include urban (modified and non-modified) streams and rivers. Regional councils regulate discharges into natural receiving environments and monitor water quality and quantity in rivers and streams. Regional councils also control takes and limits to meet environmental standards.
12. We recognise the function of a natural watercourse in the context of a stormwater management network. However, to ensure there is no confusion over the functions and powers of a water services entity and the functions and powers of a regional council, we recommend that the definition of 'stormwater network' includes 'artificial watercourses.' Artificial watercourses should then be defined in the Bill to make it clear that natural receiving environments are not captured in the definition of 'stormwater network.'
13. We also highlight that regional councils have obligations under the National Policy Statement for Freshwater Management 2020 (NPS-FM) and National Environment Standards for Freshwater 2020 (NES-F). We consider it will be important for the definition of 'stormwater networks' to be clearly defined to ensure there is no conflict with the functions and obligations of regional councils under

these freshwater policies. Our preference is also for an approach that favours stormwater to be treated at source before it is discharged into the natural environment.

14. The current definition of stormwater network may result in a water services entity having powers greater than intended. We strongly recommend ensuring the legislation does not result in overlapping jurisdictions. If there are overlapping jurisdictions between local government and water services entities, it may create either duplication of responsibilities and therefore confusion, or create gaps where it becomes unclear as to who manages the work, increasing the risk of the work not being undertaken.

Sub-part 2 – Stormwater provisions

We consider clause 257(2) of the Bill should stipulate what ‘working with’ a water services entity will involve, including whether a regional council is required to share relevant information with the water services entity and/or participate in decision-making processes. Clarity is required particularly in regard to the anticipated resource management reform where Regional Planning Committees have been foreshadowed as fulfilling many regional council decision making responsibilities. It will be critical that the stormwater plans are an input into the envisaged Regional Spatial Strategies and do not conflict, or are not conflicted by, the envisaged Natural and Built Environment Plans.

It is unclear whether the stormwater management plans could provide for a different set of rules to regional and district plans. To avoid conflicts, we consider clause 257 should state that the stormwater management plans cannot be inconsistent with regional and district rules.

We recommend that clause 466 is updated to require a Water Services Entity to take account of any new/updated resource management issues when it undertakes a review of its stormwater management plan, such as plan changes.

15. We refer to clause 22 which proposes the inclusion of a new clause 257 into the Water Services Entities Act 2022. We support the requirement for engagement and note that clause 257(2) requires regional councils to work with water services entities to develop the stormwater management plan.
16. It is unclear what ‘working with’ the Water Services Entity on a stormwater management plan might involve. We consider clause 257(2) should stipulate what is required, including whether a regional council is required to share information and/or participate in the decision-making process.
17. It is unclear whether stormwater management plans could provide for a different set of rules to regional or district plan rules and whether these would provide for different levels of stringency. To avoid conflicts, we consider clause 257 should state that the stormwater management plans cannot be inconsistent with regional and district rules.
18. Clause 259 requires the water services entity to review stormwater management plans and states that this must be done in accordance with clause 466. We recommend that clause 466 includes a requirement to review any new/updated resource management issues, such as changes to the regional rules.

Subpart 1 – Water services infrastructure on or under land

We recommend the wording in clause 200 is updated to remove the word ‘desirable’. We consider it should instead state that the water services entity ‘may carry out the following work if it considers it ‘necessary’’. We also recommend clause 200 includes an additional subsection to provide a set of criteria for determining what would be considered ‘necessary.’

We also consider an unintended consequence of clause 200 is that work undertaken by regional councils to improve the quality of a stream may be impacted by work undertaken by a water services entity in relation to their stormwater network. The ability to undertake this work in a lawful manner should not be impeded, as such clarity is required.

19. We refer to clause 22 which proposes the inclusion of clause 200 in the Water Services Entities Act 2022. This clause would give the water services entity the power to carry out work in relation to water services infrastructure on or under land. This allows the water services entity to carry out any of the work set out in subsections 1(a)-(c) if it considers it ‘necessary or desirable’ for the provision of water services.
20. We note these are broad powers and consider that the word ‘desirable’ should be removed from this section to only allow work to be carried out if it is deemed necessary. What constitutes ‘necessary’ is not defined in the Bill and we therefore recommend clause 200 includes an additional subsection to provide a set of criteria for determining when work would be considered ‘necessary’. We also consider that the Bill should ensure these powers can only be made if they are consistent with (and not in conflict with) national policy statements, regional policy statements, regional plans and the Resource Management Act (or successive legislation).
21. We consider this section highlights the need for a stormwater network to be clearly defined. For example, regional councils may undertake work to improve the quality of natural streams to meet environmental standards, such as riparian planting. We consider that an unintended consequence of this clause may be that planting is cleared or removed from a stream or adjacent area. We are also concerned that this power could be used to drain wetlands. It will therefore be important for relationship agreements to cover these scenarios and as far as possible, account for regenerative work undertaken by regional councils.

Part 7 – Controlled drinking water catchments

It is unclear whether a controlled drinking water management plan is intended to cover the same areas as source water risk management plans under the Water Services Act 2021. If they are intended to cover the same areas, we recommend consistency of terminology across the two pieces of legislation.

We recommend that ‘long-term control’ is defined in clause 231(2)(a) to avoid confusion at the implementation stages.

We recommend that clause 231 is amended to include a new subsection (4) requiring the areas designated as controlled drinking water catchments to also be identified in the proposed regional spatial strategies, once developed under the Spatial Planning Bill.

22. We refer to clause 22 of the Bill and proposed part 7 which relates to controlled drinking water catchments. Section 46 of the Water Services Act 2021 also requires regional councils to publish information about source water for source water risk management plans. We note source water risk management plans appear to overlap with the areas covered by controlled drinking water catchment areas. It is unclear whether these two plans are intended to be different. If they are not intended to be different and the areas covered are intended to be the same, we recommend consistency of terminology across these two pieces of legislation.

23. We also note that clause 231(2)(a) states that a designation may be made only if the water services entity owns or has long-term control of the land to which the designation relates. We consider a definition should be included for 'long-term control' otherwise this lack of clarity could affect the implementation of the Bill. We note that an infrastructure strategy prepared by local authorities under the Local Government Act 2002 must cover a period of 30 consecutive years. We consider that 30 years could be a suitable timeframe for what qualifies as 'long-term'.
24. Any rules made through a drinking water catchment plan should be developed with consideration for the consenting tools proposed in the Natural and Built Environment Bill and with regard to the spatial element of resource availability. We also recommend that clause 231 is amended to include a new subsection (4) requiring that areas designated as controlled drinking water catchments be identified in the proposed regional spatial strategies once these have been developed. This will ensure there is a clear link between the drinking water catchment areas and spatial strategies proposed under the resource management system reform.

Part 8 – Transfer of mixed-use rural water services

We recommend clause 236 includes a requirement for the appropriate resource consent(s) to be included in the information provided to the alternative operator.

25. We refer to clause 236(2) of the Bill which details what must be included in a transfer proposal to an alternative operator. We recommend that this section also includes the requirement for the appropriate resource consent(s) to be included in the information provided to the alternative operator.

Relationship Agreements

We consider that relationship agreements will require extensive engagement and additional resourcing may be required to have a relationship agreement in place by July 2024.

We consider that relationship agreements will need to be reviewed once implementation and engagement agreements are developed for the proposed regional spatial strategies under the reformed resource management system. It will be important that these agreements align to ensure a consistent approach to spatial planning and resource availability.

We recommend that clarity is provided as to whether a water services entity representative can be appointed to a regional planning committee.

26. We refer to the proposed inclusion of clause 467 into the Water Services Entities Act 2022. We support the requirements set out in clause 467 requiring water services entities to enter into relationship agreements with a regional council whose boundary is inside, or overlaps with, the water services entity's service area.
27. We reiterate our submission point in paragraph 13 above that the definition of 'stormwater network' needs to be more clearly defined to enable the parties to determine the scope of those agreements.
28. We also consider that the relationship agreements are likely to require extensive engagement and resourcing. We understand that relationship agreements must be entered into on or before the establishment date (as per clause 55 of schedule 1). If the establishment date is intended to be 1 July 2024, consideration should be given to the resourcing required for local government to develop these agreements within this timeframe. We anticipate an increased need for resourcing by regional councils during this time, particularly if separate relationship agreements and Regional Planning Committees are also being established under the Spatial Planning Bill and Natural and Built

Environment Bill. We consider the Regional Coastal Plan and changes to the Waikato Regional Plan (to account for the NPS-FM) will be relevant to these agreements. Regional councils must notify plan changes by the end of 2024 to give effect the NPS-FM. We consider this may be relevant to the relationship agreement but highlight the differing timeframes.

29. We consider that relationship agreements will need to be reviewed once implementation and engagement agreements are developed for the proposed regional spatial strategies under the reformed resource management system. It will be important that these agreements align to ensure a consistent approach to spatial planning and resource availability.
30. We also reiterate our previous submission point made on the Water Services Entities Bill where we recommended that infrastructure strategies are aligned with future development strategies under the National Policy Statement for Urban Development (NPS-UD). We also consider that there will need to be alignment between regional spatial strategies, national infrastructure strategies and water services infrastructure strategies. We recommend that the National Planning Framework (that will include an infrastructure chapter) provides direction for regional spatial strategies and water services infrastructure strategies to ensure there is consistency between them. We also recommend that clarity is provided as to whether a water services entity representative can be appointed to a regional planning committee to integrate processes.

Subpart 22 – Amendments to the Resource Management Act 1991

We request removing clause 95(H) from the Bill. If it is not removed, we recommend a threshold is introduced for what qualifies as an adverse effect.

31. We note clause 95H will set out the meaning of an affected water services entity. We recognise this section is consistently worded with sections 95(F) - meaning of affected protected customary rights groups and 95(G) – meaning of affected customary title groups in the Resource Management Act 1991. Under this clause a water services entity will be affected if the activity is subject to a resource consent and ‘may have adverse effects’ in the service area of the water services entity (and the water services entity has not given written approval for the activity). We note the service area will be extensive and consider the terms ‘may have an adverse effect’ to be a low threshold. In many cases an activity will have an adverse effect, either on its own or cumulatively but often the adverse effect is less than minor.
32. Our interpretation of this clause is that in most cases limited notification would be required unless the entity provides written approval. We anticipate this might be an unintended consequence of the drafting and will likely result in an increase in notified resource consents, adding to the resourcing requirements of regional councils.
33. The current presumption based on section 95E of the Resource Management Act 1991 is that a person will be affected if the activity’s adverse effects are minor or more than minor (and they do not give approval). The proposed clause 95H would effectively reverse this presumption and a water services entity would be affected unless they advise that they are not. We consider this to be too broad. We recommend removing clause 95H from the Bill (subject to consideration being given to alignment with any provisions for limited notification in the Natural and Built Environment Bill). If it is not removed, we recommend introducing a threshold to determine what qualifies as an adverse effect.

Climate change

We recommend the Bill incorporates a requirement for water services entities to have regard to the National Adaptation Plan and the Emissions Reduction Plan.

We recommend the assessment outlined in clause 245 also includes an assessment of the current and future impacts of climate change.

34. We highlight the importance for water services entities to have regard to the National Adaptation Plan and the Emissions Reduction Plan. Section 66 of the Resource Management Act 1991 requires Regional Councils to have regard to the Emissions Reduction Plan and National Adaptation Plan when preparing or changing a regional plan. We consider it essential that the Bill also incorporates a requirement for water services entities to operate within the bounds of these plans.
35. We also note that the Bill proposes that the board must inform itself about access to drinking water supply, wastewater, and urban storm water services. This will be done through an assessment as outlined in clause 245 of the Bill. Clause 245(2) sets out what must be included in this assessment. We recommend this assessment also includes an assessment of the current and future impacts of climate change, as this will determine the future amount of water available to be allocated and removed for ex-situ distribution (drinking water) and for in-situ allocation for the assimilation of contaminants (wastewater discharges).