FROM THE
OFFICE OF THE MAYOR

RANGITIKEI
DISTRICT COUNCIL

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Chair
Finance and Expenditure Committee
Parliament Buildings
Wellington

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Water Services Legislation Bill and Water Services Economic Efficiency and Consumer Protection Bill

Rangitīkei District Council appreciates the opportunity to make a submission on these two Water Services Bills.

We had circulated a draft to members of the Council's standing Iwi Advisory Committee, Te Roopu Ahi Kaa, with the intention of talking with them on 14 February 2023. However, Cyclone Gabrielle caused this hui to be cancelled. I am hopeful that it will be rescheduled in time to allow me to convey their thinking in my conversation with the Committee.

As noted in our earlier submission on to the Water Services Entities Bill, we are disappointed that the whole legislative framework was not prepared in a comprehensive way: even these two bills show a lack of congruence in their drafting. While we will set this out in more detail below, we suggest there are two general points which need close consideration:

a. extending the use of 'mana whenua' into the Water Services Economic Efficiency and Consumer Protection Bill (replacing 'Māori);
b. applying the performance requirements for the prescribed price-quality path for each water services entity in the Water Services Economic Efficiency and Consumer Protection Bill to include critical functions required in the Water Services Legislation Bill.

While we reiterate our understanding of and support for change to how the three waters are managed, we need to express two major concerns: firstly, the level of opposition to the reform proposals in our community and secondly whether the Minister's assurances on the financial implications for individual consumers will be delivered.

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We use the term 'the principal Act' when referring to the Water Services Entities Act.

In addition, we think that stormwater should be excluded from the current legislation. Given the complex interrelationships with other functions performed by local councils – particularly roading and parks – more time is needed to consider how stormwater can be managed by the new water services entities.

Water Services Legislation Bill

(abbreviated as 'the Legislation Bill')

The Council understands that the main focus of the Legislation Bill is to detail what the new entities are to do and how they are to do it. Council thinks that the new part 12 (sections 351-454 of the principal Act) is a realistic basis for ensuring high compliance. However, Council wishes to raise a number of key issues in other provisions of the Legislation Bill:

1. Relationship between water services entities and local councils
2. Tiriti o Waitangi / Treaty of Waitangi
3. Security for lenders
4. Affordability
5. Extension of services
6. Revenue collection
7. Rural water supplies
8. Rating obligations of water services entities
9. Transfer of council debt to water services entities
10. Regional advisory panels

Taking these in turn

1. Relationship between water services entities and councils

Clause 7 amends section 13 (functions of water services entities) of the principal Act, including "to partner and engage with its territorial authority owners". Council agrees with this addition as it recognises the critical relationship between the water service entities and local councils being more than its role with the regional representative group. But there is no elaboration in the Legislation Bill on this. For example, councils will need clarity on the approval and consenting processes for future large scale residential developments as these will require supporting three waters services. These processes are likely to require considerable liaison between consumers and the water services entity, necessitating considerable involvement from local councils.

By contrast, clause 95 amends section 125 of the principal Act to *require* regional councils and territorial authorities to consider the findings and implications of any water services assessment in their current infrastructure strategy and long-term plan, the district plan, and the broader duty to improve, promote and protect public health.

We suggest:
(i) adding to the amended section 13(c) "…including having regard for their placemaking, planning, consenting and community wellbeing functions", and
(ii) Including in the water services entity's performance requirements for the price-quality path specified in the Water Services Economic Efficiency and Consumer Protection Bill reporting on this partnering and engagement function.

2. Tiriti o Waitangi / Treaty of Waitangi

Clause 4 and clause 7 both amend section 13 (functions of water services entities) of the principal Act, including "to partner and engage with mana whenua in its service area" (meaning the iwi or hāpu holding and exercising in accordance with tikanga authority or other customary rights in that area).

Section 465 requires the water services entities chief executives to prepare and publish a report on how any 'specified document' (which includes any rule, requirement, restriction, plan or strategy) gives effect to

- the principles of te Tiriti o Waitangi
- Te Mana o te Wai (to the extent that this applies to the content of the specified document.

There is greater clarity on what 'partner and engage' with mana whenua means as compared with that for territorial authorities and the section 465 reports ensure accountability for this. However, this could be further strengthened by including it in the water services performance requirements for the price-quality path specified in the Water Services Economic Efficiency and Consumer Protection Bill

We suggest including reporting responsiveness to issues raised by or on behalf of Māori [or mana whenua] in the water services entity's performance requirements for the price-quality path specified in the Water Services Economic Efficiency and Consumer Protection Bill.

3. Security for lenders

Clause 15 provides for a new section 137A to be included in the principal Act. This allows for a receiver (appointed under the Receivership Act 1993 in respect of a loan or other obligation) to assess and collect a charge on the basis of it being a uniform charge in the dollar on the rateable value of property. This provision forces local councils to take responsibility for collecting debts incurred by the water services entity in its area. The Departmental disclosure statement and Explanatory statement in the Bill are silent on this provision, and it is not discussed in the Cabinet paper of 17 November 2022 approving the introduction of the Legislation Bill. Presumably, the effect is that the Crown avoids the need to offer a guarantee for lenders on the grounds that ownership technically still remains with councils. Council thinks this provision is unfair: we oppose this impost on all ratepayers irrespective of whether they are consumers of three water services.

We suggest that this provision is removed from the Bill.

4. Affordability

Council is particularly concerned to ensure that affordability remains a paramount consideration for the water services entities. The Legislation Bill does not adequately address this issue and the provisions are overly discretionary. The earlier commitment of the Minister for "safe, clean, affordable water for everyone in New Zealand no matter where they live" has become blurred.

Clause 22 adds new section 334 into the principal Act. Charging a group of consumers differently may only occur if the group receives a different level (or type) of service, or the cost of providing the service to that group is different. However, a water services entity board *may* decide not to apply a 'costs should lie where they fall' approach (including in order to remedy prior inequities in the provision of services). This fails to address *future* needs of rural communities.

Clause 13 amends section 133 in the principal Act to provide that the Minister may give directions on price charging through a Government policy statement which includes geographic averaging but only after 1 July 2027. Prior to that date, new clause 79 in Schedule 1 of the principal Act (through Schedule 1 of the Legislation Bill) the Minister may make regulations determining the charges to be made on residential customers.

Council is pleased to see clause 22 adding new section 318 in the principal Act providing for the application of the rate rebate scheme to services delivered by the water services entities.

We <u>suggest</u>
extending the obligations on water services entities provided in the new Part 9 to assess not only the access each community and population has to three water services but also the affordability of that access. (This should be included in the performance requirements of the prescribed price-quality path specified in the Water Services Economic Efficiency and Consumer Protection Bill.)
amending new section 334 **Charges for water services must be averaged geographically** and amending 334(1) by replacing 'may' with 'must'.

5. Extension of services

We question new section 339 which allows a water services entity to charge an unconnected property which is within 100 metres of a water or wastewater network with sufficient capacity to serve that property. This could have significant implications for rural properties which historically elected not to connect to a raw (untreated) or raw water scheme. There are instances in the Rangitikei District where such raw water mains run through rural properties without any connection being made to them, either because of financial considerations or because they had alternative sources. This potential anomaly is readily resolved by restricting the provision to properties within urban areas.

We suggest
amending new section 339 (1) by adding 'urban' after 'property'

6. Revenue collection

Clause 22 adds section 336 to the principal Act allowing a water services entity to insist that a local council collects charges on its behalf (in exchange for a 'reasonable payment for providing the service') until 1 July 2029. (This is referred to as "pass-through billing".) To facilitate this, a water services entity will enter into a 'charges collection agreement' with the council. If a charging agreement is not agreed upon, the Minister has power to impose terms, an intervention which we oppose.

Council's strong preference is that the water services entities should have their own billing processes so that local councils are not involved. This new section 336 blurs the line between councils and the water services entities and will be confusing to ratepayers and consumers. Changes are needed to mitigate this. If the council sends out invoices on behalf of a water services entity, they should be separate and on the water services entity's letterhead so that it will be the entity (and not the council) which will be the point for questions and complaints. (We are aware that clause 73 the Water Services Economic Efficiency and Consumer Protection Bill requires each water services entity to have established a complaints process effective from 1 July 2024.) In addition, there is potential for additional cost to councils in giving effect to a charging schedule different from what it currently has. If it is not practical for water services entities to implement their own billing / collection system (either individually or collectively by contracting to a third party), they should be obliged to work within the charging systems used by each territorial authority within their area. This is permitted by the new clause 61 in Schedule 1 of the principal Act (by Schedule 1 of the Legislation Bill).

Council is concerned to see Schedule 1 of the Legislation Bill adds new clause 63 into Schedule 1 of the principal Act, allowing a water services entity to charge a council for stormwater services between 1 July 2024 and 1 July 2027 if the water services entity is not charging system users directly. While new section 340 requires water services entities to calculate the total recoverable cost of delivering its stormwater services in its service area during the financial year in accordance with any relevant input methodologies for price-quality regulation that the Commerce Commission has determined, clause 61 just referred to above makes it unnecessary to wait for that calculation to charge individual property owners for stormwater. This complexity is just one of many which arise from including stormwater within the scope of the present legislation. More time and engagement with local councils is needed to determine the best solution for managing stormwater.

We <u>suggest</u> that
amending subsection (1) by adding "by issuing separate invoices with the letterhead of the relevant water services entity"
subsections (3) and (4) in the new section 336 are removed
new section 337 is amended to read (a) unless the council agrees otherwise, the current charges and rates collected by each council, adjusted for inflation in accordance with that council's normal practice and (b) binding on both parties
stormwater is removed from the scope of the current legislation.
new clause 63 added in Schedule 1 is removed.

7. Rural water supplies

Clause 22 adds a new Part 8 (sections 234-244) to the principal Act. Local government-owned mixed-use rural water supplies that provide both drinking water (to 1000 or fewer non-farmland dwellings) and water for farming-related purposes (where 85% or more of the water supplied goes to agriculture/ horticulture) must transfer to the water services entities. These supplies may (on application) subsequently (i.e after 1 July 2024) be transferred to an "alternative operator" (defined as one or more individual users of the service or an entity incorporated by and owned entirely by one or more users of the service) The proposed alternative operator must pay all costs associated with the application, including the cost of the independent panel of experts which assesses whether the transfer proposal is viable and the referendum.

While the process mirrors the recommendations from the Rural Supplies Technical Group, the timing is not: they envisaged that any such exceptions would be considered before 1 July 2024. The Cabinet paper from 17 November 2022 notes this change, as one which is likely to be contentious, but gives no explanation. Yet Taumata Arowai has already developed its acceptable solution for such supplies. Council considers that it is much more efficient to deal with exceptions early, when the relevant local council and the management committee of the rural water scheme are better placed to examine the case of an application for an exception and to prepare the necessary business case. We had already started discussions with the management committees of Rangitikei District's two largest rural water supply schemes, both of which fall within the "mixed-use" definition. The change in timing implies that Internal Affairs officials wish to discourage applications for exceptions and wish to avoid this distraction during the establishment period of the entities. Deferring consideration until after 1 July 2024 is likely to be cumbersome and runs the risk that the assets of the scheme that are handed back will be different from those that were transferred and that the current arrangements to maintain the schemes will be lost. At a minimum, the assets of all mixed-use rural schemes transferred to the new water services entities should be ring-fenced for a specified period of time.

The 'mixed-use' rural water supply schemes are a very minor part of New Zealand's drinking-water supply. They are, primarily, for horticultural use: schemes which are solely for that purpose are outside the scope of the new water services entities. Given the work by Taumata Arowai noted above, Council considers that the Bill should allow evaluation of whether a 'mixed-use' rural water scheme can be managed adequately by scheme members forming a new entity, provided this (including the required referendum) is completed by 31 March 2024. This would mean the transfer request process in the Bill would become the responsibility of councils rather than the water services entities.

We suggest that rural mixed-use water supplies be outside the scope of transfer to a water services entity unless the relevant council makes such a request. This may be achieved by amending clause 3(a) of Schedule 1 in the Water Services Entities Act by adding 'except for 'mixed-use' rural water supply schemes which are included only at the request of the local government organisation currently administering such schemes'.
amending the new sections 236, 238, 239 and 241-by substituting 'local government organisation' for 'water services entity'.
amending the new section 236 by adding to subsection (c) 'and completed by 31 March 2024'.
If this suggestion, is not accepted we ask that the Bill provides that assets of all mixed-use rural water schemes transferred to the water services entities are ring-fenced for five years from 1 July 2024 to provide assurance that a transfer proposal from such a scheme is based on that scheme's assets.

8. Rating obligations of water services entities

Clause 22 adds a new Section 342 to the principal Act which provides that water services entities will not pay rates on pipes through land they do not own, nor on assets located on land they do not own. However, the Legislation Bill does not clarify what rates the entities will pay to local councils for land transferred from local councils which is used for facilities such as bores, reservoirs and treatment plants. Council thinks that having the entities pay a share of rates is an important way of funding the partnering and engagement role expected from local councils. Applying the approach taken with property used by Defence is a reasonable compromise.

We suggest amending clause 22 by adding a new section 342A to the Water Services Act: A water services entity shall pay rates to the relevant local councils on the value of the land transferred by that local council for the entity's facilities.

9. Transfer of Council debt to water services entities

Schedule 1 of the Bill inserts a new Part 2 into Schedule 1 of the principal Act. Council's concern lies with clause 54 which provides that the assessment of the total water services infrastructure debt amount will be made by the Chief Executive of the Department of Internal Affairs. We are puzzled by this approach to a matter of great importance to local councils and their communities who potentially might end up carrying unexpected (and unbudgeted) levels of debt. It appears to be outside the scope of arbitration provided in clause 44 of this amended Schedule 1. There is no recourse to the Minister if there is a disagreement on the amount, but there should be an opportunity for formal review. The council must agree the date and manner of payment (but this does not extend to the total amount).

We suggest that 'water services infrastructure debt' is included within the scope of arbitration in clause 44 of this amended Schedule 1.

10. Regional advisory panels

Clause 7 which amends section 13 of the principal Act includes among the specified functions "to provide advice, information, funding and support for … (any regional advisory panel) to perform or exercise its duties, functions and powers…" Council is disappointed that the Legislation Bill has not included provisions which make the formation of regional advisory panels mandatory. We think having such panels, established in close consultation with the territorial authorities in each entity area, will help keep the regional representative group to a manageable size. We are aware that the Water Services Entities Act as passed allows the size of the regional representative group to be determined by each entity without restricting the number of members.

We think there should be a reporting requirement (at least once annually) by each panel to the territorial authority (or authorities) whose area the panel covers. This will help reinforce communication between the water services entities and local councils.

We suggest an additional clause 9A adding a new section 91 (ea) **Establishing regional advisory panels** in the Water Services Entities Act: *Each water services entity (through its regional representative group) must consult with all of its constituent territorial authorities and (as far as practicable) give effect to their view on what would be appropriate geographic areas for each regional advisory panel to cover, taking into account population and the territorial authorities' individual discussions with iwi and hapū with whom they relate.*
We suggest adding subclause 3 to section 48 in the Water Services Entities Act: *Each regional advisory panel will provide at least one written report annually to the territorial authority or authorities whose area the panel serves, outlining the issues addressed and conveyed to the regional representative group.*

Water Services Economic Efficiency and Consumer Protection Bill

(abbreviated as 'the EECP Bill')

Council fully supports the EECP Bill's objectives of ensuring service quality and consumer rights protection, as specified in clause 12: incentivise innovation and investment including replacing, upgrading and new assets, improve efficiency, share the efficiency gains in the supply of water services, including through lower prices, and limit ability to extract excessive profit. We have highlighted the following issues

1. The case for economic regulation
2. Tiriti o Waitangi / Treaty of Waitangi
3. The Water Services Commissioner
4. Service quality code, complaints and disputes resolution
5. "Information disclosure" regulations
6. "Quality" and "price-quality" regulation

Taking these in turn

1. The case for economic regulation

Economic regulation protects consumers from problems that can arise in markets with little or more competition. This is the principle applying to electricity, gas and tele-communications. Consumers will not be able to choose an alternative provider for three waters services other than the entity covering their location. This lack of choice is no different from the present situation; with the possible exception of the performance measures for assets (including the three waters) prescribed by Internal Affairs for annual reporting, there has been no economic regulation of the three waters under 67 councils.

'Affordability' is not a term used in the EECP Bill. We think it should be. In addition, a broader view needs to be taken about the impact on the services provided on the environment and health.

Clause 141 requires water services entities to pay all or part of the costs incurred by the Commerce Commission in carrying out the functions specified in the EECP Bill. Council is aware that this provision mirrors that through which the Remuneration Authority operates. However, we think it would be preferable for the Commission to wholly Crown-funded in carrying out these functions. We agree with clause 142 which requires the water services entities to pay a levy to fund the disputes resolution service

We suggest
adding 'affordability, including regard for groups more vulnerable to price shocks' to clause 12.
adding 'take into account the impacts on their services on the environment and public health'.
Including affordability as a measure in the prescribed price-quality path for each water services entity.
deleting clause 141.

2. Tiriti o Waitangi / Treaty of Waitangi

Clause 6 requires the Commerce Commission to maintain systems and processes which have the capacity to uphold Tiriti o Waitangi, and engage with Māori and understand perspectives of Māori. Schedule 2, clause 1 provides that the consumer dispute resolution service must make available processes recognised under tikanga, for use when appropriate and that implement te ao Māori approaches.

However, the EECP Bill does not provide any mechanism to evaluate the adequacy of the systems and processes of the Commerce Commission in terms of section 6. There is no mention of an expectation of familiarity with tikanga or te ao Maori in clause 128 specifying the knowledge required in the Water Services Commissioner.

As noted above, the EECP Bill does not use the term 'mana whenua' included in Legislation Bill.

We suggest adding to clause 128 'familiarity with tikanga or te ao Maori' and adding what each water services entity is achieving in engaging with Maori [or mana whenua] in the prescribed price-quality path for the water services entities.

3. The Water Services Commissioner

Clauses 127-135 provide for the Minister to appoint a Water Services Commissioner – from someone who is already a member of the Commerce Commission – to exercise all functions, duties and powers specified for the Commerce Commission.

Having a dedicated appointment will be crucial in developing and monitoring the economic regime being implemented. Allowing other members of the Commerce Commission will help address workload issues. However, we question whether it is essential that the appointment is made from an existing member of Commerce Commission.

We are surprised that there is no annual reporting requirement specified for the Water Services Commissioner. While that work will be noted in the Commerce Commission's annual report, we think there will be high community interest in the Water Services Commissioner's work.

Council considers that clause 52 provides an important safeguard by requiring a water service entity to reconsider its funding and pricing plan if inconsistent with any charging principles set out in any legislation dealing with water services. However, we think there needs to be clear public reporting on that reconsideration.

We suggest
amending clause 128 'or eligible for appointment' which would allow a Water Services Commissioner to be appointed before becoming a member of the Commerce Commission and adding to clause 129 with subclause 5: The Water Services Commissioner will provide a written report annually on functions carried out by the Commission under this Act'.
and
amending clause 53 by adding 'and publicly report on the outcome.'

4. Service quality code, complaints and disputes resolution

Clause 69 requires the Commission to make a service quality code but not necessarily before until 1 July 2027. This is three years after the water services entities have started business. Council thinks that this approach needs rethinking. The water services entities should be developing their own service quality codes during the establishment period (as part of their transitional obligations in clause 2(a) Schedule 1 of the Water Services Entities Act), so they are in place and visible for consumers and entity staff alike. We think the more appropriate role for the Commission is to periodically review these codes and issue guidelines (as is the case in section 234 of the Telecommunications Act).

Clauses 73-74 requires the water services entities to establish a complaints process; clause 75 provides that the Water Services Commissioner will monitor the complaints process. Clause 76 provides for an independent resolution service. The Minister must approve all such resolution services: Schedule 2 specifies the requirements, including a review by the Commission of all such resolution services at least every three years.

Council supports the proposed separation of the complaints from dispute resolution but we think the Commission should review and ultimately approve all complaints processes before they are implemented. The systems established by the four entities should be readily comparable. We agree with clause 77 making decisions of the resolution service binding unless the customer lodges an appeal and the periodic reviews by the Commerce Commission.

The complaints and dispute resolution provisions complement (but do not substitute for) the more formal economic regulation. The Act makes them effective from 1 July 2024. This timing is critical. However, given the likelihood that information disclosure regulation will not be in place until 1 July 2027, it will be harder for decide on reasonable thresholds for complaints.

We suggest that
clause 69 is amended **Water service entity must make service quality code**
(1) Each water services entity must develop and publish a service quality code by 1 July 2024 covering all its services.
(2) The Commission must review the service quality codes of the four water services entities and publicly report on this by 1 July 2027 to each of the entities, including guidelines
Clause 70 is amended to substitute 'Water services entity' for Commission'
clause 73(1)(b) is amended by adding, previously approved by the Commission.

5. "Information disclosure" regulations

Clause 15(5) allows the information disclosure determination by the Commerce Commission to be unique to each water services entity, but the determination may apply to more than one. While there are likely to be common elements, preferring a unique approach rather than a generic approach will limit comparisons of performance across the four water services entities. However, experience with the generic mandatory performance measures prescribed by Internal Affairs for the three waters services administered by councils shows the need for careful assessment of what information will be useful.

The information disclosed is intended to allow consumers and interested stakeholders to influence the strategic direction and performance of water services entities. However, the degree of aggregation consequent on the scale of each water services entity may limit the usefulness of the disclosure to a consumer interested in a specific area. One option would be to require a more focused disclosure relevant to the regional advisory panels, where these are established.

We suggest extending clause 34(1) to specify 'the areas relevant to regional advisory panels'

6. "Quality" and "price-quality" regulations

"Quality" reports on matters such as frequency of interruptions, water leakage, and customer service expectations.

"Price-quality" is the regulatory tool which caps the maximum allowable revenue, subject to a set of minimum quality standards. It may include incentives such as penalties requiring a reduction in prices because of failure to meet the required quality standard and also performance requirements such as a particular approach to risk management, ring-fencing minimum amounts of revenue for investment purposes.

Council considers that "price-quality" brings teeth into the regulation of water services entities and makes the information disclosure requirements more meaningful. However, we think that the use of incentives penalties/rewards/ compensation in the prescribed price-quality path for each water services entity should be mandatory rather than discretionary and that the performance requirements for the prescribed price-quality path for each water service entity should be expanded.

We suggest,
in clause 42(3) replacing “may” with “must” so that there is a mandatory regime of incentives, penalties, rewards and compensation.
In clause 42(3)(b) extending the list of the performance requirements for the prescribed price-quality path for each water services entity to include –
reporting consideration given to affordability
reporting responsiveness to issues raised by or on behalf of Māori
reporting the partnering and engagement undertaken with territorial authorities (cf. clause 7 in the Water Services Legislation Bill amending section 13 of the Water Services Entities Act)

I would like an opportunity to talk with the Committee.

The contact person to arrange a time for that session is Karen Cowper, Executive Officer: karen.cowper@rangitikei.govt.nz

Nga mihi

Andy Watson
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