FROM THE
OFFICE OF THE MAYOR

RANGITIKEI
DISTRICT COUNCIL

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Cameron Brewer
Chair
Finance and Expenditure Committee
Parliament Buildings

Via Parliament's website

Kia ora Cameron

Local Government (Water Services) Bill

Rangitīkei District Council appreciates the opportunity to comment on the Local Government (Water Services) Bill. We wish to note our appreciation for the early information provided by the Department of Internal Affairs on policies to be formalised in the Bill, particularly the process for establishing water organisations (and the options available for territorial authorities). This has been helpful in guiding our investigation on collaborating with neighbouring councils: in December 2024, the Council resolved that its proposed water services delivery model was to establish a council-controlled organisation with Whanganui and Ruapehu District Councils. Public consultation will start early March 2025.

We also appreciated the early clarification on the establishment of economic regulation and consumer protection

The Council is pleased to see the Bill confirm (in clause 296) that the Water Services Authority – Taumata Arowai is to implement a regulatory framework which is 'proportionate' and to ensure 'compliance costs for mixed-use rural water schemes recognise the context of their circumstances, including scale, complexity, and risk profile, and (In clauses 326-327) that the Authority's drinking water compliance, monitoring and enforcement strategy and annual drinking water regulation report will specifically mention mixed-use rural water schemes.

We are glad to see clarification (in Schedule 1) about arrangements for local authority staff whose employment is primarily in the provision of water services when those services are transferred to another organisation.

06 327 0099 027 617 7668 andy.watson@rangitikei.govt.nz www.rangitikei.govt.nz 46 High Street, Private Bag 1102, Marton 4741

Council agrees with the Bill's provisions (in 291) regarding the Water Services Authority's responsibility for developing and implementing the National Engineering Design Standards and (in clauses 328 and 330) wastewater and stormwater environmental performance standards.

However, this a complex and lengthy Bill: we have several matters which we would like the Committee to consider:

1. Relationship with the Local Government (Water Services Preliminary Arrangements) Act
2. Discretion over what is to be included in the transfer agreement - mixed-use rural water supply schemes
3. Shareholders' powers
4. Charges and serviceability
5. Stormwater
6. Powers of entry
7. Development contributions
8. Protection of water services infrastructure
9. Relationship with Māori
10. Annual report
11. Requirements from other agencies
12. Amendments to other legislation

We address each of these below.

1. **Relationship with the Local Government (Water Services Preliminary Arrangements) Act**

   We wish to highlight clause 26(7) in the Bill

   In the event of any inconsistency arising between any of the requirement under sections 26 to 30 and the corresponding alternative requirements in Part 3 of the Local Government (Water Services Preliminary Arrangements) Act 2024, the requirements of sections 26 to 30 prevail to the extent of the inconsistency.

   The 'alternative arrangements' referred to are those which Council is complying with in undertaking consultation on its preferred delivery model – a three-council CCO with Ruapehu and Whanganui District Councils. Section 62(3) of the Local Government (Water Services Preliminary Arrangements) Act is specific in not requiring territorial authorities s to consult again when making its decision on its proposed or anticipated delivery model.

   That could be significant if, as a result of consultation, Council decides on a different delivery model. If such a decision came after the enactment of the Bill, it would be treated as a change proposal, requiring a further round of consultation. This would make it very difficult to achieve certainty about the delivery model for the water services delivery plan in time for its submission to the Secretary for Local Government by 3 September 2025.

   - Council <u>suggests</u> an amendment:

   - Clause 25(7A) Where a territorial authority has commenced consultation on its proposed delivery model as part of preparing a water services delivery plan before the commencement of this [Act] , the alternative requirements in Part 3 of the Local

Government (Water Services Preliminary Arrangements) Act 2024 will prevail over sections 26-30.

2. **Discretion over what is to be included in the transfer agreement – mixed-use rural water supply schemes**

Clauses 11 and 12 (together with Schedule 2) allows the territorial authority to determine what matters that are transferred to a water organisation and the matters that are not transferred. This means that the Council may decide to retain its three rural water supply schemes which are deemed to be 'mixed use rural water schemes' under clause 303, and specify that exclusion in the transfer agreement. (The Council's fourth rural water supply scheme is not used for drinking-water, so is out of scope).

However, such a decision would mean that the Council would be the water services provider in respect of those rural water supply schemes, meaning it would be required to

- develop a drinking water catchment plan and consult on it (clauses 143-145)[1]
- develop a water services strategy and consult on it (clauses 190-195), and
- prepare and adopt an annual water services report (clause 205)

Clause 205 allows a territorial authority to include its water services annual report in its annual report prepared and adopted under section 98 of the LGA 2002, provided both are discrete and audited separately.

Clause 143 allows the Council to delegate the preparation of a drinking-water catchment plan to a water organisation but requiring inclusion of mixed-use rural supply schemes would not be reasonable. There is no equivalent power to delegate for the water services strategy.

- Council <u>suggests</u> that, where territorial authorities have delegated to a water organisation to prepare a drinking-water catchment plan and water strategy, both should be able to be included within the territorial authority's long-term plan and consulted with as part of that, specifically:
    - Clause 144(6) Notwithstanding clauses 144(1)-(5), if a territorial authority has established a water organisation, the territorial authority may include the drinking-water catchment plans being developed for water services it has not transferred as part of its long term plan process.
    - Clause 195(3A) Notwithstanding clauses 195(1)-(3), if a territorial authority has established a water organisation, the territorial authority may include the water services strategy being developed for water services it has not transferred as part of its long term plan process.

3. **Shareholders' powers**

The Bill modifies the provision in the Local Government Act for Council Controlled Organisations.

Council considers that the Bill needs to ensure there is a balance between the independence of the water organisation Board to direct an efficient, consumer-focussed water services business and the ability of shareholders (territorial authorities) to influence key decisions being made by the Board. The Bill is specific in not allowing members or employees of territorial authorities to be appointed as Board directors, implying that the Board should ultimately be independent of the territorial authorities.

Yet, clause 7 in Schedule 2 *Contents of the transfer agreement* (between a territorial authority and a water organisation) provides that the transfer agreement must specify whether the territorial authority or the board of the water organisation will be responsible for making final decisions about

- the water organisation's capital expenditure and operating expenditure for the water services it provides, and
- the water organisation's level of charges and revenue recovery for the water services.

This seems at odds with the overall purpose for establishing a water organisation.

- Council suggests that clause 7 in Schedule 2 is deleted. However, if the Committee prefers to retain this clause, Council suggests that a direction is given to Internal Affairs to provide specific guidance on how the territorial authority is to give effect to it without detracting from the authority of the board.

a) Clause 187 Content of the statement of expectations:

- Council suggests that the mandatory content is extended to include what is specified in (2)(a) relationships – including hapū, iwi, and other Māori organisation and (2)(b) performance indicators and measures. These are both significant matters for an effective relationship between shareholders and the water organisation.

b) Clause 186: Water organisation must give effect to the statement of expectations

This provision ensures that the statement of expectations is taken seriously (by both shareholders and the water organisation) but it contains a risk that the statement of expectations will be beyond the capacity of the water organisation to meet.

- Council suggests adding clause 185(6): The shareholders in the water organisation must provide a draft of the statement of expectations to the water organisation at least one month before the intended final submission date and (i) take comments from the water organisation into account in finalising the statement of expectations and (ii) attach the water organisation's comments as an appendix.

c) Clause 196 Process for making water services strategy – water organisations. This allows shareholders to decide whether they will require the water organisation to amend the strategy and/or approve the strategy and can require the water organisation to consult on a draft strategy. Council thinks this is a potential overreach by the shareholders. We note (and agree) that clause 193 does not commit the water organisation to any specific action noted in the strategy and the water organisation may make an inconsistent decision.

- Council suggests clause 196(2)(a) and clause 196(6) are deleted.

d) Clause 202 Process for making water services annual budget. This gives shareholders similar powers over the annual budget as for the strategy. The suggested changes to clause 196 would address this overreach,

e) Clause 209 Additional plans or reports – water organisations. This allows shareholders to require reports not specified in the statement of expectations. This is a potential unforeseen imposition on the water organisation.

- Council suggests amending 'may' to 'must' in clause 209(2), so that the additional reports are included in the statement of expectations.

f) Clause 23 Significant contract requirements: This requires a water organisation to incorporate directions from shareholder in its policy for significant contracts. However, there is no engagement with shareholders when considering entering into such a contract: Council considers that the Bill should require this so that shareholders are not surprised.

- Council suggests adding clause 23(3A) Before entering into a contract which is a significant contract the water organisation must advise the shareholders and get their agreement.

4. **Charges and serviceability**

Council supports the proposal in clause 60(6)(b) that a water organisation must not use property valuations in setting charges and the five-year transition period provided in clause 63(5). This ensures there is no confusion between the water organisation's charges and the rate-setting powers given to local authorities.

Clauses 60-62 allow charges for properties within 100 metres of a water, wastewater or stormwater network which are not connected but could be. As no percentage of the 'connected' charge is specified, the serviceability charge could be the same as the connected charge. While this is reasonable in urban areas where the network reticulation will be in the neighbouring road or road reserve, the provision poses a risk for rural properties, in particular those which are close to a raw water reticulation or main supply and where no previous agreements have been reached to allow water to be taken.[2] While councils periodically decide to extend their water or wastewater networks into rural areas, this is typically a decision taken following consultation with affected properties, with the shared charges set accordingly. A serviceability charge for those not opting in is unnecessary.

- Council suggests amending
  clause 61(2) by adding 'urban-zoned' before 'property'
  clause 62(1) by adding 'urban-zoned' before 'property'

However, consideration is needed for drains and ditches maintained in rural areas which lead to a piped reticulation for disposal.

- Council suggests adding clause 62(1)(aa) in rural areas where the boundary to the transport corridor includes a drain or ditch which lead to a piped reticulation for disposal

5. **Stormwater**

The Bill has changed the arrangements for stormwater from those announced in the policies released in September 2024.

Clause 10(2)(b) prohibits a territorial authority from transferring to a water organisation any of the authority's responsibility for the operation of transport corridor stormwater infrastructure. Council notes that the briefing provided to the Minister of Local Government on 13 June 2024 on stormwater services states:

> …the stormwater infrastructure in transport corridors has been developed to enable the transport functions of those corridors. To protect that transport function, particularly in relation to local roads which (apart from Auckland) are owned and operated by territorial authorities, we propose that the legislation should define transport stormwater infrastructure, by recognising that the primary purpose of that infrastructure is for transport purpose. It would include all infrastructure owned or operated by a transport corridor manager to collect or discharge stormwater relating to a transport function of the corridor. The benefit is that this would help councils to identify which stormwater assets they may wish to transfer to a future organisation, if they are using a standalone water organisation for stormwater delivery.

Council considers this is an unhelpful distinction. The fundamental purpose of a stormwater system is to prevent flooding – not just on roads but also property. Stormwater pipes (like that for drinking water and wastewater) are typically in the transport corridor, connecting to treatment or disposal areas. Council considers that the Committee to have regard for the view of Water NZ who, in their submission to the previous Government's Water Services Legislation Bill proposed that the new water services entities 'take responsibility [for] control of the water quality in both public stormwater networks and 'transport stormwater systems'.

Because territorial authorities manage their stormwater network holistically, the 'benefit' noted above in the briefing to the Minister is hard to understand as the Bill pushes authorities to not transferring any stormwater assets to a future organisation. This is highly undesirable.

The Committee will be aware that stormwater across New Zealand has had a comparatively low investment compared with drinking water and wastewater. Yet climate change and increased likelihood of flooding places urgency on upgrading stormwater infrastructure. The raised borrowing threshold from the Local Government Funding Agency for water organisations which are council-controlled organisations is crucial to achieving the needed increased investment. Leaving stormwater with territorial authorities with their lower borrowing threshold will jeopardise that.

- Council <u>suggests</u> that clause 10 is deleted.

Council considers that the content requirement for the stormwater network risk management plan in clause 167 is sufficient to provide assurance about transport corridor safety, but suggests an amendment to ensure there is no doubt about this.

- Council suggests adding in clause 167 (1)(a) 'identifying all transport corridors containing stormwater infrastructure'

6. **Powers of entry**

Part 3 Subpart 4 provides for how a water services provider may access land to carry out water services infrastructure work. It cross-references provisions to the now repealed Water Services Entities Act 2022, continuing the provisions there which allow the landowner to impose conditions. They represent a change from those specified in section 181 and Schedule 12 of the Local Government Act 2002.

Although these provisions may make required work more difficult, Council supports the Department's view, in its Regulatory Impact Statement on the Bill, dated 18 July 2024, that these are modernised provisions which provide 'appropriate protections for all parties'. However, there is no equivalent in the Bill to section 182 in the Local Government Act 2002 which provides for an enforcement officer of a local authority to enter any land or building (other than a dwelling house) to check utility services. That is a significant omission, but readily addressed.

- Council suggests adding new clause 115A, mirroring section 182 with relevant amendments. Clause 18 allows for continuation of section 193

Power of entry to check utility services

(1) An officer, employee or agent of a water services provider may enter any land or building (but not a dwellinghouse) for the purpose of ascertaining whether—
(a) water supplied from any waterworks or water race to any land or building is being wasted or misused; or
(b) any drainage works on any land are being misused; or
(c) any appliance or equipment associated with a local authority utility service on the land is in a condition that makes it dangerous to life or property.
(2) The power under subsection (1) may only be exercised if the officer, employee or agent —
(a) believes on reasonable grounds that the circumstances in any of paragraph (a), paragraph (b), or paragraph (c) of that subsection exist; and
(b) the water service provider, where practical, engages with the occupier of the land or building to gain consent to entering the property and to keep potentially dangerous animals at a safe distance.
(3) If an officer, employee or agent is refused entry or obstructed when exercising the power in subsection (1), the water services provider may restrict the water supply to the land or building, as if it were a local authority provided for in section 193 of the Local Government Act 2002.

Clause 18(1)(d)(i) allows for the continuation of section 193.

7. **Development contributions**

Rangitīkei District Council's development contributions policy is not to have such a policy. Instead, Council has opted for monetary payment under development agreements. Clause 85 allows a water organisation to adopt a development contributions

policy after consultation in accordance with section 82 of the Local Government Act 2002. This will introduce new costs for developers in districts like Rangitīkei; even in districts where there are development contributions policy which include water services, the water organisation may have a different approach despite the principles set out in clause 79 being virtually identical to those in sections 197AB of the Local Government Act 2002. Council considers it is important for the water organisation to gain the views of its shareholders before developing or reviewing a development contributions policy.

- Council suggests adding clause 85(4A) A water organisation must seek the views of its shareholders prior to developing or reviewing a development contributions policy, and include those views when publishing the policy under clause 85(3).

We question why, in clause 109, the Crown should be exempt from a liability to pay development contributions

- Council suggests deleting clause 109.

8. **Protection of water services infrastructure**

Council is concerned how clause 141 Protection of water services infrastructure and clause 142 Owners of land not responsible for maintenance will affect mixed-use rural water supplies. The Committee is probably aware that most of these schemes were built in the 1980s with substantial funding from the Government. Typically, no easements were put in place for the scheme reticulation pipes laid on private property. While clause 141 clarifies that only the Council, as owner of the scheme, has any interest in this infrastructure, clause 142 allows the owner of the land to disregard it, unless there is a legally binding agreement requiring that.

This poses a risk to the rural water supply reticulation. Council or its contactors need to be able access pipes in the event of failure, so maintenance of access tracks by the property owner is essential. In addition, conversion of farms to forestry from running stock means a risk of damage to the pipelines (as well as difficulty of access).

- Council suggests adding clause 142(1A). Clause 1 does not apply to owners of land through which there is reticulation for a mixed-use rural water scheme (as proposed by clause 303 to be added as section 13A in the Water Services Act 2021).

9. **Relationship with Māori**

The briefing provided to the Minister of Local Government on 3 October 2024 on *Giving effect to Treaty settlements and other Treaty obligations relating to water services* states the government's view is that 'under Local Water Done Well, the policy is that it should be up to local councils and iwi/Māori to determine how their relationships and partnerships work in practice'. Council supports that policy, noting that clauses 123-130 give detailed consideration to access onto Māori land. However, for this policy to be realised adequately, Council considers there need to be changes in the Bill which strengthen and clarify this relationship.

a) Clause 15 specifies the objectives of water services providers but is silent on any relationship with Māori

- Council suggests adding to the objectives specified in clause 15(1)(a) for a water services provider: (vii) acknowledge Maōri aspirations and tikanga.

b) Clause 41 Water service providers to act consistently with Treaty settlement obligations. While such recognition is essential, it overlooks a wider issue – first to those iwi/hapū which have yet to have their Treaty claims settled, and second the recognition of te ao Māori.

- Council suggests reconsideration of clause 41: Water service providers to act consistently with Treaty settlement obligations.

c) A mandatory recognition in the statement of expectations has been raised above.

d) Council considers that there should be an opportunity for iwi to join territorial authorities as shareholders, if that is what the territorial authorities collectively want. The only mechanism in the Bill is to seek an exemption under clauses 55- 57. Council considers that this is a decision for the partnering territorial authorities to make.

- Council suggests amending the definition of shareholder in clause 4 by adding 'iwi or hapū or Māori representatives as determined by the territorial authorities who are shareholders in the water organisation following engagement with iwi and hapū of their respective districts'.

e) Clause 40 specifies the requirements for Board directors of the water organisation, but is silent what an 'appropriate' mix of skills, knowledge and experience in relation to providing water services' might be, thus leaving it to the judgement of shareholders. Council considers it is necessary to make explicit the need to understand Māori views on water as these will influence expectations from regulators and consumers.

- Council suggests amending clause 40(2) by adding 'including knowledge of tikanga Māori te ao Māori and te Tiriti'.

f) Clause 293 specifies the requirement for the Board of the Water Services Authority – Taumata Arowai. The same regard for Māori view is relevant here, and is consistent with clause 296 amending the Authority's operating principles to include 'meaningful' partnership with Māori

- Council suggests amending clause 298 by adding 'including knowledge of tikanga Māori te ao Māori and te Tiriti'.

g) Clause 344 defines 'Treaty settlement Act' differently from that given in clause 41(2). Council questions the need for that difference.

- Council suggests that the definition for 'Treaty settlement Act' in clause 344 is amended to 'has the same meaning as in clause 41(2)'.

10. **Annual report**

Schedule 4 prescribes the content of the water services annual report. In general, it is concerned with the 'group of water services activities' rather than specifying the particular activities of drinking water, wastewater and stormwater (depending on whether the reporting entity undertakes one, two or there of these activities).

However, clause 203 explains the purpose of these report being

(a) to enable the water organisation's shareholders and the public to make an informed assessment of the water organisation's performance; and
(b) to compare the water organisation's intended activities and intended performance levels for providing water services, as set out in the water organisation's water services strategy for the financial year, with the actual activities and performance levels.

That suggests the focus of the annual report should be on activities.

- Council suggests substituting 'each water services activity' for 'each group of water services activities' in clause 2(1)(b), clause 4(1), clause 5, and clause 7.

Council is puzzled by the requirement in clause 3 of Schedule 4 for the annual report 'to specify the dividend, if any, that the organisation's shareholders have authorised the organisation to pay (or the maximum dividend that the organisation proposes to pay) for its equity securities (other than fixed interest securities)'. This is in accordance with clause 3 of Schedule 6 (inserting a new Schedule 7 into the Commerce Act) but we wonder why the qualification to the requirement in clause 16(1)(a) (repeated in clause 1 of the proposed new Schedule 7) that 'the provider must spend the revenue it receives from providing water services on providing water services', the provisions for financial management specified in clause 211, and the revenue threshold regulation specified in part 3 of the new Schedule 7.

- Council suggests the Committee consider whether the provisions allowing for a dividend to be paid is in accordance with the principle of ring-fencing water services revenue.

11. **Requirements from other agencies**

The Bill specifies circumstances where other agencies are allowed to give overriding directions to a water organisation. Council questions some of these.

Clause 20 provides for a water services provider to ensure water supply when an existing supplier facing a significant problem in doing that, empowering the Water Services Authority - Taumata Arowai to require the water services to address the problematic supply of drinking water by another provider. This could be a significant distraction and cost for the provider receiving the requirement.

- Council suggests that clause 20(1)(b) is amended by adding 'after prior consultation with the provider which is to receive the requirement'.

Clause 199 provides for the Secretary for Local Government or the Commerce Commission to require the water services provider to request a report from the Auditor General on the water services strategy. No grounds are specified for such an action. It will come at a cost to the

provider, in terms of the Auditor General's charges as well as for the time taken to respond to questions from the Auditor-General.

- Council suggests that clause 199(5) is added to specify 'The Auditor-General's charges for the audit requested under subclause (1) must be met by the agency which issued the requirement on the provider.

12. **Amendments to other legislation**

Clause 224 amends section 53ZG of the Commerce Act 1986, empowering the Commerce Commission to exempt any information from disclosure as commercially sensitive. Such exemptions (or variations or relocations) are deemed secondary legislation. Since the water organisations which are council controlled organisations remain within the scope of LGOIMA (as clarified in clause 239), Council questions why it is not sufficient for such water organisations to rely on LGOIMA rather than introducing a parallel process.

- Council suggests adding the following words at the end of clause 224: 'This does not apply to water organisations which are council-controlled organisations,'

Clause 225 adds a new subpart 12 to part 4 of the Commerce Act 1986. It includes, at section 57AA Interpretation, definitions for stormwater, water supply and wastewater services. Council suggests a cross -reference to clause 4 in the Bill with these definitions is to be preferred, to provide assurance that the understanding of the scope of both Acts is aligned.

- Council suggests that clause 225 and the proposed section 57AA is amended 'In this subpart and in Schedule 7, unless the context otherwise require, stormwater service, water supply service and wastewater service have the meanings stated in clause 4.

Clause343 amends Schedule 1 of the Taumata Arowai–the Water Services Regulator Act 2020, including adding in Schedule 8 of the Bill. That Schedule is for the Local Government (Water Services Preliminary Arrangements) Act.

- Council suggests that the reference to Schedule 8 in clause 343 is amended to Schedule 11.

Schedule 12 amends the Local Government Official Information and Meetings Act 1987:

After section 45(1A), insert:

(1B) Despite paragraph (b) of the definition of meeting in subsection (1), meeting, in relation to a water organisation within the meaning of the Local Government (Water Services) Act 2024, means a meeting of the board of the organisation and does not include a meeting of a committee or subcommittee of the board.

Council questions why committees and sub-committees are excluded. This is not the case for local government. It could be viewed by the community as a device for secretive decision-making. The shareholders collectively meeting will be a joint committee under clause 30(1)(b) of Schedule 7 of the LGA 2002 and that is subject to LGOIMA.

- Council suggests that the suggested inserted section 45(1B) into the Local Government Official Information and Meetings Act 1987 is deleted.

Council hopes these comments and suggestions are useful. I would like the opportunity to talk with the Committee, either in person or online. Please contact my Executive Assistant, Karen Cowper, karen.cowper@rangitikei.govt.nz or (06) 327-0099 to advise a time for this.

Ngā mihi

Andy Watson
Mayor of the Rangitīkei District