

## Submission

**To:** Committee Secretariat  
Health Committee  
Parliament Buildings  
Wellington

**By:** Northland Regional Council

**On:** Water Services Bill

### 1. Executive summary

Council supports the intent of the Bill and for the most part the detail. However we have some specific points summarised below:

- The regime established in the Bill has the potential to add complexity and compliance costs to the drinking water system, especially for smaller suppliers (also see point below).
- A high proportion of Northlander's are not on reticulated public supply – the regime should ensure these often vulnerable people are not 'left behind' and their needs can be considered in drinking water supply.
- The implications of government policy settings/direction must be considered, especially those that potentially constrain access to water (such as the National Policy Statement for Freshwater 2020) or require councils to provide for urban growth capacity (National Policy Statement for Urban Development)
- The definition of water supplier is potentially set too low as it captures everything above a domestic self-supplier – we are not sure this is warranted in terms of risk and compliance costs.
- Regional councils should also be notified when drinking water is unsafe, or where risks / hazards to supplies are identified given their role in risk management plans.
- We recommend applications to register a drinking water supply also be provided to regional councils to: a) ensure the council is aware of new obligations (such as provision of monitoring data, source water safety/risk management and reporting) and b) to allow comment on any concerns with the quality / quantity of the source.

### 2. Introduction

- 2.1. Northland Regional Council (NRC) is grateful for the opportunity to submit on the Water Services Bill (the Bill). NRC's submission is made in the interest of promoting the sustainable management of Northland's natural and physical resources and the wellbeing of its people and communities. NRC's submission is made in relation to our functions under the Resource Management, Local Government and other Acts relevant to our role.

### **3. Background**

- 3.1. We understand the rationale for the reform of the 'three waters' system in New Zealand, including the quality issues experienced in Havelock North and the under-investment in infrastructure in some areas (particularly municipal supplies and wastewater).
- 3.2. Northland has not experienced the drinking water quality / contamination problems that have occurred in Havelock North and some other areas in NZ, largely because all district council provided drinking water supplies in Northland are treated (and district councils provide most of the community drinking water networks). We do however experience problems with security of supply in some areas during extended periods of dry weather / drought – largely due to reliance on natural waterbodies (typically rivers and to a lesser degree groundwater). We also experience significant water poverty issues at times particularly in those communities without reticulated supply – notably about 90,000 people in Northland (50% of Northland's population) and about 95% of Marae are not serviced by public supply and the majority of these non-reticulated supplies are not treated. In times of drought, these people rely to a large extent on deliveries sourced from public networks. In other words, the area of supply is much larger than the reticulated networks during extended dry spells. We note the one of the objectives of the three waters review was to improve the regulation and supply arrangements of drinking water, wastewater and stormwater (three waters) to better support New Zealand's prosperity, health, safety and environment, not just those on public supplies.
- 3.3. Council has taken steps to address this in our upcoming Long Term Plan - we're proposing to put \$500,000 per year toward a water resilience scheme which if progressed could provide funding and grants to those most in need so they can buy water tanks, guttering and spouting – council is looking to partner with other funders to increase the capacity of this scheme. Other initiatives being progressed in Northland by a range of parties include:
- two water storage projects through Te Tai Tokerau Water Trust
  - Te Rarawa water storage at Sweetwaters,
  - seven community projects under Te Whitiū ngā Punawai o Hokianga,
  - the NgaiTakoto Te Hiku water project

- 3.4. Our water resilience issues will be exacerbated by climate change predictions with longer more frequent dry periods expected and potentially lower average annual rainfall. We therefore support system reform that will facilitate investment into improved quality standards and expanded capacity of water services, provided consolidation (and the allocation of investment that goes with it) doesn't neglect our most vulnerable rural communities and perpetuate the problem of underinvestment in these areas. We support the intent of the Bill agree that a revised form of regulatory oversight is needed. We also acknowledge there are issues around the operation and performance of wastewater and stormwater networks in some areas (including parts of Northland). We therefore support the intent of the Bill and improved regulation and oversight of the 'water services' system.

## Submission

### 4. General points

- 4.1. Principles: Council strongly supports the principles inherent in the Bill, especially the protection of source water, the maintenance of multiple barriers against contamination and the application of a risk management approach. While not directly addressed in the Bill we also strongly support the intent that water supply (and supplying entities) remain effectively in public ownership – we do not support delegation of or transfer of this vital function to the private sector as we do not see this as being in the public interest or benefit.
- 4.2. Affordability:
- 4.2.1. Council is concerned at the potential costs imposed on water users, councils and ratepayers as a result of changes to the three waters regime – for example environmental performance measures and compliance rules applied to three waters network performance should recognise affordability issues and the range of constraints, particularly those faced by smaller communities in less affluent areas. While we understand structural reform is likely to address some of these issues (by enabling greater investment for example), we are concerned at the potential for demand in major centres to attract the most investment leaving smaller rural communities behind. We acknowledge performance measures and associated regulations have yet to be developed by Taumata Arowai, but Council wishes to highlight affordability concerns to the Health Select Committee now so the issue can be considered in system design and especially the cost of meeting new performance standards. Reports commissioned by the DIA in its three waters review provide some good insight into costs of network upgrades (especially in relation to wastewater upgrades to meet objectives of the NPS Freshwater<sup>1</sup> and drinking water compliance costs<sup>2</sup>). We also note the definition of water

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<sup>1</sup> [https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-documents/\\$file/Costs-of-wastewater-upgrades-GHD-Boffa-Miskel-Final-report-Oct-2018.docx](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-documents/$file/Costs-of-wastewater-upgrades-GHD-Boffa-Miskel-Final-report-Oct-2018.docx)

<sup>2</sup> [https://www.dia.govt.nz/diawebsite.nsf/Files/Three-Waters-Review-Cabinet-papers-April-2018/\\$file/Beca-report-Cost-Estimates-for-Upgrading-Water-Treatment-Plants.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-Waters-Review-Cabinet-papers-April-2018/$file/Beca-report-Cost-Estimates-for-Upgrading-Water-Treatment-Plants.pdf)

supplier (as it currently stands in the Bill) has the potential to impose compliance costs on a much larger group than currently the case and are not convinced this is warranted in terms of the risk.

4.2.2. This is a particular concern for us as Northland has areas of significant economic deprivation, especially in the mid and far north (**Appendix 1**: Interactive maps of deprivation in NZ: University of Auckland). The region also has many small dispersed rural communities which leads to many small-scale three waters networks which are comparatively expensive and funded from small rate bases. The affordability of any system reform and consequent regulatory and compliance costs is therefore of concern, especially if this means a shift to increased use of fees and charges for three waters services. This was highlighted in the December 2019 report by the Productivity Commission into local government funding and financing which noted in relation to three waters infrastructure (at Page 90): *Small and dispersed communities with a large amount of water infrastructure per person face a particular challenge in funding and financing the maintenance and renewal of that infrastructure. This pressure is compounded by requirements to meet strengthened safety and environmental regulations.* This is supported in conclusions reached in the Three Waters Review by the Department of Internal Affairs - the Economic Analysis of water services aggregation commissioned by the DIA indicates that “*between \$27 billion and \$46 billion of additional investment will be required over the next 30 years to upgrade three waters assets to meet environmental and drinking water standards*”.

#### 4.3. Government policy settings:

4.3.1. Again, we note the regulatory environment has been highlighted in the December 2019 report by the Productivity Commission into local government funding and financing which noted in relation to three waters infrastructure (at Page 90): *Small and dispersed communities with a large amount of water infrastructure per person face a particular challenge in funding and financing the maintenance and renewal of that infrastructure. This pressure is compounded by requirements to meet strengthened safety and environmental regulations.* [Emphasis added].

4.3.2. There are tensions between providing infrastructure that supports the health and well-being of communities and the policy direction from central government through national instruments such as the National Policy Statements for Freshwater Management 2020 (NPS-FM) and Urban Development (NPS-UD). The NPS-FM includes a requirement to provide for Te Mana o Te Wai which establishes a hierarchy of obligations that places the well-being of waterbodies above human health needs (Clause 1.3(5) of the NPS-FM). The NPS-FM also includes a requirement to set environmental limits that can affect water availability such as minimum flows/levels and allocation limits – these limits in combination with the primacy given to the health of waterbodies are likely to further reduce access to water and have

implications for suppliers to provide adequate quantity especially in regions like Northland that rely heavily on small rivers and aquifers for source water with little associated storage. A similar tension is likely in relation to water quality limits, particularly where wastewater or stormwater discharges contribute to a failure to meet national bottom lines set under the NPS-FM.

#### 4.3.3. Providing for urban development capacity and growth

It appears the Minister has a preference for a degree of separation between suppliers and local authorities and the creation of a small number of large-scale water suppliers<sup>3</sup>. While we understand the rationale for scale / consolidation (particularly in relation to the scale of investment needed), there is again potential for tension in delivering on government policy in the NPS for Urban Development (NPS-UD) – this directs that councils must provide for urban development and in particular meet demand for housing and business land. This will require a high degree of alignment and coordination between water suppliers and council planning to ensure water supply infrastructure and capacity matches plans for increased urban capacity/growth. There would need to be very strong links between investment and infrastructure planning between water suppliers and local authorities if they are to be separate entities (this may be less of a concern if the structure means water suppliers are CCOs). The Bill makes some provision for this by amending the Local Government Act 2002 (LGA) by inserting new sections 125 – 128 that include requirements for assessment of drinking water services by local authorities and to report the results to Taumata Arowai. Council supports these amendments to the LGA. However, these provisions tend to focus on issues with existing supplies rather than future needs. We'd suggest the definition of a 'significant problem or potential problem' in section 127(3)(a) include reference to a drinking water supplier declining to provide for reasonable future growth, new supply networks or increased capacity. This would allow Taumata Arowai to act somewhat as an arbitrator for example where a lack of capacity or investment by a water supplier frustrates planning for growth.

## 5. Detailed comments

### 5.1. Definitions / interpretation

5.1.1. Drinking water: the definition in section 6 of the Bill differs from those used in standards developed under the Resource management Act 1991, namely: The National Environmental Standards for Sources of Human Drinking Water 2007 and the definition in the National Planning Standards. We understand the National Environmental standards are under review

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<sup>3</sup> Cabinet paper Dec 2020: Paragraph 13 [https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/\\$file/Progressing-the-Three-Waters-Service-Delivery-Reforms-Dec-2020-Cabinet-paper-and-minute.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/$file/Progressing-the-Three-Waters-Service-Delivery-Reforms-Dec-2020-Cabinet-paper-and-minute.pdf)

– for clarity certainty and consistency, we recommend definitions be aligned in all relevant documents.

5.1.2. Water carrier: the definition of water carrier in the Bill seems to have the effect of making water carriers a subset of drinking water suppliers – it is unclear whether this would mean all water carriers (E.g. water truck delivery companies) would be subject to all the responsibilities / requirements for water suppliers, such as authorisations, prescribed skills and qualifications for operators in subpart 10 of the Bill. If this were to be the case, it is likely to result in undue administrative / compliance costs – we’d recommend clarifying whether water carriers are subject to subpart 10 (and any other water supplier obligations) or not. We note water carriers provide an important service in Northland where many self-supplying dwellings rely on deliveries by water tankers during dry periods and would be concerned if the Bill resulted in significant increased cost to these consumers due to unintended / overly prescriptive compliance costs. The need for water carriers to be subject to the same or similar standards as network operators is unclear, especially if the source water is from a registered (and compliant network) and the carrier already has approval (currently by District Health Board).

5.1.3. Drinking water supplier, domestic self-supply and domestic dwelling:

The definition of drinking water supplier is set at a very low threshold (everything above a domestic self-supply is captured). The definition of domestic self-supplier (and examples) has the same effect and suggests that marae and community halls and multi-dwelling buildings that have their own water supply are not domestic self-suppliers – meaning they are considered water suppliers for the purposes of the Bill. These definitions have potential to impose significant compliance costs for marae, community halls and self-supplying multi-unit buildings (small rural schools may be another example of this class of supply) – we recognise that obligations on suppliers are to reflect the scale, complexity and risk, however at this point the Bill is unclear on how this is to be reflected in terms of obligations. We strongly recommend that the obligations under the Bill be clarified. An alternative would be to change the definition so it applies to the provision of drinking water to 25 or more people.

## **5.2. Duties of drinking water suppliers**

5.2.1. Council supports the duties of drinking water suppliers set out in sections 21-29 of the Bill. We’d suggest section 21(2) and 22(2) also include a requirement on the supplier to notify the relevant councils (district and regional) if there is a likelihood drinking water is unsafe (s21(2)) or drinking water does not comply with standards (s22(2)) and this notice to include any information on the reasons the water is unsafe or does not comply with standards (on the basis that local authorities have a role in the development and implementation of source water risk management plans).

5.2.2. Council supports the duty in section 25 to provide sufficient quantity of drinking water and the exceptions in Clause 25(3) that provide for restricting / interrupting supply, noting that regional councils are required to include limits on water takes to ensure aquatic ecosystem health is maintained (E.g. to ensure takes do not contravene minimum flows in rivers). We suggest section 25(3) make explicit reference to a water shortage direction issued under section 329 of the RMA – we note water shortage directions can be in force for up to 14 days and it may be prudent to extend the time periods in section 23(4) to reflect this. We also suggest section 26(1)(b) also be amended so that if the quantity of drinking water is at imminent risk the supplier can request the relevant regional council to issue a water shortage direction (either to restrict other takes that affect the quantity of supply at source or to ensure restrictions apply to use of water).

### **5.3. Drinking water safety plans**

5.3.1. Council strongly supports the requirements in section 30 for drinking water safety plans and the matters they must include in section 31, especially the requirement for a multi-barrier approach in 31(1)(h) and the definition of a multi-barrier approach in 31(2). We agree Taumata Arowai is the best entity to review drinking water safety plans and monitor compliance.

### **5.4. Notification requirements**

5.4.1. Council supports the ability of Taumata Arowai to declare risks or hazards that affect the supply of water to be notifiable risks or hazards in section 35(1). We acknowledge the information sharing requirements in section 44 but recommend 35(2) be amended to explicitly require water suppliers to also notify relevant councils that a notifiable risk or hazard exists (given the role councils have in the development and implementation of source water risk management plans).

### **5.5. Source water**

5.5.1. Council supports the requirement for source water risk management plans (in Clause 42) and the matters they are to address. Section 42(2)(d) of the Bill refers to values identified under the NPS-FM for freshwater bodies used as a drinking water source by a water supplier. We recommend that section 42(2)(d) be amended to also include any outcomes for freshwater identified by local authorities under Clause 3.9(3) of the NPS-FM. While a reference to the values is useful, the outcomes sought are likely to be more meaningful for the purposes of a source water risk management plan.

5.5.2. Council supports the requirement for local authorities to contribute to the development and implementation of the risk management plans noting Northland councils have already made collaborative steps towards this. We note however, that regional councils may not monitor water quality in every freshwater body used as a drinking water supply and may not propose too either given that suppliers are required to monitor source water quality at the abstraction point under section 43. We'd suggest adding 'any available' to the start of section 42(4)(a)(ii).

5.5.3. It is unclear how the source water monitoring requirements in section 43 would apply to marae, community halls and the like that rely on roof collection – we assume monitoring would occur at the storage point (i.e. water tank)? We support the requirement for Taumata Arowai to provide source water quality monitoring data to regional councils if regional councils are to report under sections 45(1) and 45(2).

5.5.4. Council strongly supports the information sharing requirements in section 44 between Taumata Arowai, local authorities and water suppliers.

5.5.5. Section 45(1) requires annual reporting by regional councils to Taumata Arowai on source water quality and quantity in the region (including any changes) – it is hard to comment on this without seeing compliance rules on these requirements but we understand and support the rationale. We note NPS-FM Clause 3.30(1) imposes similar reporting requirements for ecosystem health and human health so this may not present a significant additional burden. The requirement in section 45(2) to assess the effectiveness of measures to manage risks to source water seems logical and 3 year frequency is practical – but there appears to be no direction to act in the event regulation is not effective – one option would be to feed the results of this assessment into source water risk management plans or water safety plans. We'd also suggest water suppliers be consulted as part of the assessment in required in section 45(2).

## **5.6. Standards, rules and directions**

5.6.1. Council strongly supports the consultation requirements of section 52 that apply to the development of drinking water standards, aesthetic values, compliance rules and acceptable solutions / verification methods. As noted above, such instruments should reflect the different classes of drinking water supplies (e.g. marae, schools and community halls etc) and range in scale, risk and complexity.

5.6.2. We strongly encourage templates being developed for drinking water safety plans – this makes requirements clear and provides consistency.

## **5.7. Drinking water supply register**



5.7.1. While it is likely regional councils would normally be aware of a proposed drinking water supply (e.g. through a resource consent process / change in use), we recommend applications to register a drinking water supply also be provided to regional councils to: a) ensure the council is aware of new obligations (such as provision of monitoring data, source water safety/risk management and reporting) and b) comment on any concerns with the quality / quantity of the source. Alternatively, Taumata Arowai may seek comment from relevant regional councils on the above in considering the application.

5.7.2. It is unclear in the Bill how the process in section 53 aligns with resource consent processes under the RMA. It would seem logical that relevant resource consents (if needed) would be sought prior to the application to register the supply. It may be wise to ensure any applications to register a supply have all the authorisations needed prior to applying.

## **5.8. Exemptions from drinking water standards**

5.8.1. Council strongly supports the powers of Taumata Arowai to provide exemptions from drinking water standards in section 56 and the ability to provide conditions to such exemptions – we suspect this may prove be a well used section of the Act given the broad definition of water supplier and relatively narrow definition of domestic self supplier.

## **5.9. Other provisions**

5.9.1. Council supports the requirement in section 64 to consult the relevant consent authority before granting an exemption to Part 3 RMA for actions taken under emergency.

5.9.2. The provision for statutory management, review and appeals in subparts 12 and 13 are supported.

5.9.3. Section 105 – the requirement to consult the relevant consent authority prior to exercising of powers under s104 that would contravene sections 9, 12, 13, 14 or 15 RMA is supported.

5.9.4. Council strongly supports the consultation requirements of section 140(2) prior to developing amending environmental performance measures for wastewater and stormwater networks – we recommend reference to section 52 be included in 140(2) and s52(1) be amended to include performance standards for stormwater and wastewater networks as these are likely to be of some public interest.

5.9.5. The enforcement and powers provisions in Part 3 appear logical and comprehensive. The provision in the Bill for infringement offences is supported – in our experience in many cases prosecutions are not warranted and infringement notices are a practical tool for enforcement / responding to breaches of a minor nature. Compliance orders (subpart 3) are another useful tool to compel or prevent actions that could affect drinking water supplies and are therefore supported.

## **5.10. Amendments to other acts**

5.10.1. Council supports the amendment to the Local Government Act to require assessments of drinking water, wastewater and sanitary services by territorial authorities (new sections 124 – 128). The matters to be included in the assessment of drinking water services in section 125 appear comprehensive and logical as does the 3 year frequency. The requirements following the assessment set out in section 126 are also supported especially the requirement to report to Taumata Arowai on the absence of, or deficiency in a drinking water service (section 126(2(b))). The link between the assessment and infrastructure strategies and long-term plans in section 126(3) is also beneficial.

5.10.2. We also support the insertion of new section 104G into the Resource Management Act 1991 to require regard be had in the resource consent process to actual and potential effects of proposed activities on the sources of registered drinking water supplies and any risks the activity may pose that are identified in a source water risk management plan.

## **6. Conclusion**

NRC is grateful for the opportunity to provide input into the Bill. As noted above we support the intent of the Bill, subject to relief sought above. It appears to be a well-considered and well drafted piece of law that will go far to ensure a safe and reliable drinking water system. Our only caution would be to ensure the regime established does not impose undue regulatory and compliance costs on the drinking water system and end-users.

We do not seek to be heard in the event the Committee hold hearings or calls for verbal presentations.

Signed on behalf of Northland Regional Council

Malcolm Nicolson (Chief Executive Officer)

Dated: XX / 02 /2021

**Appendix 1:** Extract – Interactive maps of deprivation in NZ: Index of multiple deprivation (University of Auckland) <https://www.fmhs.auckland.ac.nz/en/soph/about/our-departments/epidemiology-and-biostatistics/research/hgd/research-themes/imd/maps.html>

