



RUAPEHU DISTRICT COUNCIL

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To: New Zealand Parliament
1 Museum Street
Pipitea
Wellington

Subject: **Water Service Legislation Bill**

Submission from: Ruapehu District Council
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Council does not wish to speak in support of its submission.

The Ruapehu District ... where adventure begins!



1 ACKNOWLEDGEMENT

- 1.1 Ruapehu District Council (RDC) thanks the Select Committee for the opportunity to present its views on the Water Services Legislation Bill (the Bill). RDC supports the purpose and objective of the Bill and acknowledges that Aotearoa New Zealand faces significant infrastructure challenges in relation to drinking water, wastewater, and stormwater services.

2 ABOUT US

- 2.1 The Ruapehu District is a land-locked area covering 6,733km², with a usual resident population of 12,309 (Statistics NZ, Census 2018). Ruapehu is one of New Zealand's largest districts by land area, however, has a relatively small and dispersed population base with one of the lowest resident population densities in the country (0.02 persons per hectare). The Ruapehu District has high levels of socio-economic deprivation compared to other parts of the country.
- 2.2 The Ruapehu District has a strong primary industry sector and despite Covid, it is also a growing tourist destination and enjoys a significant and steadily increasing number of visitors and non-permanent residents each year. The Ruapehu District receives approximately 1.2 million visitors annually, and although the district's usual resident population is lower, the population goes up to approximately 28,000 on our peak day.

3 SUMMARY

- 3.1 RDC agrees that changes are necessary to improve the delivery of water services to our communities, however the speed at which the reform is progressing is of concern. It is notable that the first half of the Bill contains amendments to the recently enacted Water Services Entities Act 2022 (WSEA).
- 3.2 RDC's primary concerns in relation to the Bill relate to the impact these changes will have on us as a local authority, and include the following:
- a) The process around the transfer and vesting of assets in the Water Services Entity (WSE) and the payment for the associated debt;
 - b) If WSEs are not in a position to charge consumers for stormwater services after the transition has occurred, WSEs can charge councils for the use of stormwater services after the transition has occurred and until 1 July 2027;
 - c) The requirement that councils share rating information with WSEs that WSEs may not be appropriately remunerating councils for;
 - d) The Bill appears to intend to make land owned by WSEs non-rateable;
 - e) Councils being used by WSEs for pass-through billing;
 - f) Issues with WSEs charging principles and inconsistencies between those charging principles and the ability of WSEs to use geographic average pricing;
 - g) The Crown's exemption from being required to pay water infrastructure contribution charges;
 - h) The lack of clarity around what water services functions may continue to be carried out by councils;
 - i) Issues around how existing council bylaws will be adopted by WSEs and the lack of engagement required during that process;



- j) Concerns around the inability of small mixed-use rural water supplies to opt-out of the regime;
- k) The lack of clarity regarding how the three waters reform will align with and complement other legislation and other reforms that are currently under way, in particular the Resource Management Act reform.

4 TRANSFER AND VESTING OF ASSETS IN WSE AND PAYMENT OF DEBT

- 4.1 The process governing the transfer of assets and associated debt is critical to the overall success of the reform. The Bill states that the assessment of what will transfer to the Water Service Entities (WSEs) will lie with the relevant WSE's Chief Executive (CE), by giving them the responsibility of developing an allocation schedule. This process is currently underway. There are two obligations when preparing an allocation schedule. The first is the relevant CE must consult with each council when developing the schedule, including the supply of a draft and the opportunity to make written comments. After comments are provided, the CE must inform councils in writing of the reasons for any "amendments made" to the draft allocation schedule. Should councils wish to request additions to the allocation schedule, the consultation process does not contain a requirement for the CE to address any requested additions. RDC submits that section 39(d) of the Bill should be amended to provide for this.
- 4.2 The second obligation is that the Minister must approve each allocation schedule. Under the current proposal the Minister has unconstrained power when giving approval or not, including the power to amend the schedule as they consider appropriate. There is no requirement for the Minister to engage with the WSE or the relevant council when making their decision. This second obligation is of concern to RDC, particularly in respect of how the transfer of assets and associated debt is to be dealt with. Providing the Minister with such unconstrained power has the possibility of creating long-term fiscal problems for councils. RDC agrees with and endorses Taituarā's recommendation contained in their submission regarding the Bill that clause 40(2), Schedule 1 of the Bill be amended to require that any ministerial amendments to the allocation schedule submitted under clause 40(1), Schedule 1 be forwarded to local authorities for comment, within 14 days of receipt.
- 4.3 Of further concern is the fact that there is currently no recourse to the Minister if there is a disagreement regarding the allocation schedule. Councils are only able to agree on a date and manner of payment, not the amount that is to be paid. RDC submits that a statutory dispute resolution process should be added to the Bill to assist where there is a disagreement between the Minister and councils regarding the allocation schedule.

5 WSES CHARGING COUNCILS FOR STORMWATER UNTIL 1 JULY 2027

- 5.1 Proposed clause 63 of Schedule 1 of the WSEA states that between 1 July 2024 and 1 July 2027, a WSE may charge a council for stormwater services provided within that council's district, if the WSE is not charging customers directly. RDC strongly opposes this provision. A WSE is providing services to its customers, not to councils, and it should be charging those customers, in its own right, from its establishment date. The ability of using councils in this way is inappropriate, lacks transparency and is unfair to councils who must then somehow recover those costs without having any responsibility for, or relationship with, the services in question.



- 5.2 It is unclear how this provision would work in practice. The Bill gives no specific power to councils to rate to recover these costs, nor does it put in place any timing requirements to enable that to be accommodated within a council's normal funding and financial planning cycle. RDC submits that if the Bill continues to allow WSE's to charge councils for stormwater instead of their customers, this provision should be accompanied by a specific authority for councils to rate to recover those costs, perhaps on a prescribed basis, in order to reflect the fact that the council is being used as a conduit for recovering charges on behalf of the WSE.

6 SHARING OF RATING INFORMATION

- 6.1 The Bill states that councils must give WSEs information from their rating information database that the WSE reasonably needs in order to charge its customers. This information must be provided on a "reasonable cost basis". The Bill contains no further guidance as to what a "reasonable cost basis" would be, including whether it encompasses just the cost of extracting and providing the information, or also the cost of the information itself.
- 6.2 The information contained in the rating information database will be derived from the district valuation role (DVR), prepared under the Rating Valuations Act 1998 (RVA). The DVR information is currently used by both territorial authorities and regional councils. Section 43 of the RVA contains a formula for the sharing of costs and its preparation (if not otherwise agreed), which depends on the respective rates revenue generated by the councils and the costs incurred in preparing and maintaining the particular information required by the regional council.
- 6.3 RDC submits that it would be appropriate for WSEs to also share in the costs of the preparation of the relevant information, in a manner proportionate to the revenue which the WSEs will receive through the use of that information. It is inappropriate that councils should be subsidising the operating costs of WSEs. Accordingly, RDC submits that section 319 of the Bill should be amended to make it clear that WSEs can be required to pay a share of the costs calculated on a specified basis, in the same or similar way to section 43 of the RVA.

7 WSE RATES EXEMPTION

- 7.1 The Bill appears to intend to make land owned by WSEs non-rateable. RDC strongly opposes this. There is nothing about land that is used for water services which qualifies it for non-rateability under the schedule of non-rateable land contained in the Local Government (Rating) Act 2002. The same land, used for the same purpose, and presently owned by councils or their CCOs, is currently fully rateable. There is no good reason for removing that status and depriving councils of much needed rates revenue, simply because the assets are transferring to WSEs.
- 7.2 It is arguable that granting non-rateable status to WSE land is inconsistent with the statutory principle of financial independence of WSEs, in particular the prohibition on council owners giving their WSE financial support (section 171(1)(c) of the Water Service Entities Act 2022). An exclusion from paying rates is a form of financial support. Councils should not be subsidising WSEs in this manner.

8 COUNCIL COLLECTION OF CHARGES / PASS-THROUGH BILLING



- 8.1 Section 336 of the Bill states that a WSE “may authorise” a council to collect charges on behalf of the WSE, and the Chief Executive of a WSE and the council “must take all reasonable steps” to enter into a charges collection agreement. The agreement must provide for “reasonable compensation” to councils, and the Minister determines any terms, if the parties are unable to agree.
- 8.2 Councils are clearly being required to provide billing services for the WSEs. This is concerning as Councils may not have the resources required to provide this service to the WSEs. Attracting and retaining staff in the local government sector is a challenge, particularly for small rural councils like RDC. Councils may need to employ additional or temporary staff to carry out this work. The issue of attracting and retaining staff will be compounded by the fact that the WSEs will be competing for the same staffing resources. There is potential for an arrangement that allows WSEs and councils to share staff and resources to assist through the transition period. In any event, councils need control over whether they carry out this service or not. Accordingly, RDC submits that councils should have the ability to refuse to accept authorisation to enter into a charges collection agreement.
- 8.3 Where a council agrees to be a collection agent, there is potential for confusion with the public about who is responsible for water services if councils are doing the billing. Processes will need to be developed to ensure that when invoices are issued, they clearly reflect the fact that it is a WSE charge that is being billed for. Issues are likely to also arise in respect of identifying and reconciling payments, dealing with partial payments etc.
- 8.4 There is also potential for disagreement about what “reasonable compensation” is. Guidance will need to be provided by central government around the type of costs that can be included. Usual costs such as postal fees and other administration costs like the reading of meters would likely be included, but what if improvements are required to council systems to deal with invoicing and payments, or what if new staff are required to be employed to undertake this work? The final decision regarding compensation should be for the relevant councils to determine. This is not something that needs to be decided by the Minister. RDC submits that a statutory dispute resolution process should be added to the Bill to assist where there is a disagreement on terms between the WSE and councils in relation to councils collecting charges on behalf of WSEs.

9 CHARGING PRINCIPLES AND GEOGRAPHIC AVERAGING

- 9.1 The Bill contains charging principles in the proposed section 331 of the WSEA, which are mandatory considerations when setting charges. There are some issues with this section. The section does not state whether the list of charging principles is exclusive, or whether the WSE is able to consider and take into account, other matters as well. If WSEs are unable to consider and take into account other matters when setting charges, this section is too limited.
- 9.2 In line with the statutory objectives of WSEs in section 12 of the WSEA, the charging principles should allow WSEs to set charges taking into account matters such as:
- a) the affordability of the charges to consumers or groups of consumers;
 - b) the need for or desirability of incentivising consumer behaviour (e.g., reduced water consumption);



- c) the extent to which consumers or groups of consumers are causing or contributing to the need for particular services or the costs of that service (this may be relevant to trade waste charges in particular);
- d) the administrative costs and benefits to the WSE of uniform vs differentiated charging;
- e) the overall impact on consumers and communities.

9.3 Currently, broader considerations such as these must be taken into account by local authorities when determining how the water services they provide are to be funded (section 101(3) of the LGA). Accordingly, RDC submits that charging principles in proposed section 331 of the WSEA be expanded to include consideration of the principles set out in paragraph 9.2 above.

9.4 RDC supports the use of geographic average pricing. Using this pricing method can smooth and share costs across a WSE's service area, despite differences in the actual cost of servicing different communities in that area. This will assist vulnerable customers such as those who reside in the Ruapehu District. There is however a potential inconsistency between the charging principles and the geographic averaging authorised under section 334. RDC submits that there needs to be a distinct link between sections 331 and 334 where it is clearly stated that the charging principles do not limit the power to charge geographically averaged prices.

10 WATER INFRASTRUCTURE CONTRIBUTION CHARGES

10.1 Under proposed section 331 of the WSEA, the Crown is exempt from paying water infrastructure contribution charges. This will mean that the water user must subsidise the Crown's infrastructure connection charges. RDC submits that an exemption from paying infrastructure contribution charges is something that the Crown should have to apply for and be required to justify. Crown agencies are often major developers that can exacerbate issues that are the responsibility of councils, or that will soon be the responsibility of WSEs.

10.2 An application should reference the benefits that would be obtained by a particular community from such a Crown project, and those benefits should be sufficient to justify the associated water services-related costs that would be borne by all consumers across the WSEs' service area. RDC agrees with and endorses LGNZ and Taituarā's recommendation that section 348 be removed from the Bill. The Crown should be liable for infrastructure contribution charges.

11 RESIDUAL WATER SERVICES FUNCTIONS OF COUNCILS

11.1 The Bill lacks clarity around what water services functions may continue to be exercised by councils. WSEs have the function of providing water services in their respective areas, which are: water supply, wastewater and stormwater. The proposed amended definition of "water supply" excludes water supplied for agricultural or horticultural purposes, unless supplied by the WSE. There are also issues in respect of the Bill's definition of "stormwater network", as it is limited to WSE infrastructure in an urban area. This seems to indicate that stormwater outside of urban areas will remain under council control, however the WSE's statutory stormwater function applies to its entire service area. This needs to be clarified. RDC submits that the Bill should clearly set out what the respective roles and functions of WSEs and councils are in relation to stormwater, rather than that being left to interpretation.



- 11.2 If there are indeed residual water services functions that councils will be responsible for, there are some powers that will be necessary for councils to retain to enable them to carry out those residual water services functions i.e., the power to recover development contributions that relate to councils residual water services functions, and the power to construct works on private land (section 181 of the Local Government Act 2002). RDC submits that these matters need to be clarified and addressed in the Bill.

12 BYLAWS

- 12.1 Section 56 of the proposed new part 2 of Schedule 1 of the WSEA provides for the WSE Board to make certain “instruments” during establishment, which are not effective until the establishment date. This includes the power to adopt (with or without change) councils’ existing water services bylaws to become new stormwater network rules, trade waste plans, water use restrictions, or other instruments under the WSE’s new powers. It is concerning that the normal engagement requirements do not apply, provided the instrument applies to the same area and has the same *material effect* as the existing bylaw.
- 12.2 These provisions will facilitate the transition, but it is not clear how easy it will be to make modifications to and consolidate council bylaws to become workable instruments. If there is no requirement to engage with councils and communities, how can the WSE be certain that modifications or consolidation will have the same *material effect*? RDC submits that the WSE should be required to consult with the relevant council regarding modifications to instruments when adopting councils’ existing waters bylaws.

13 RURAL WATER SUPPLIES

- 13.1 Section 234 of the proposed new Part 8 of the WSEA deals with small mixed-use rural water services. The provision states that suppliers that supply drinking water (to 1000 or fewer non-farmland dwellings) and/or water for farming related purposes (where 85% or more of the water supplied goes to agriculture/horticulture) will transfer to the WSEs. These rural supplies can subsequently be transferred to an “alternative operator” i.e., the local community served by the supply, if they meet certain requirements.
- 13.2 The transfer provisions outlined in proposed Part 8 are complex and could become costly to the users of these rural water supplies. As a predominately rural district, the Ruapehu District has numerous rural water supplies that would fit this definition. RDC submits that there should be an opt-out option available for communities that can demonstrate that they satisfy the “transfer requirements” outlined in section 236. This is in line with Local Government New Zealand’s submission in relation to the Bill, whereby they support the recommendation of the Rural Supplies Working Group, which promoted a regime where the local / affected community could ‘opt out’ from the initial transfer. RDC supports and endorses that recommendation.

14 ALIGNMENT WITH OTHER LEGISLATION AND REFORMS

- 14.1 Given the significance of the three waters reform, it is essential that the new system aligns with other legislation and other reforms that are currently under way. In particular, it is essential that the Water Services Legislation Act aligns and integrates with the Resource Management Act reform.



- 14.2 The Bill empowers WSEs to prepare a wide array of documents, including controlled drinking water catchment areas and plans, stormwater management plans and rules, and water services assessments. The scope of these documents may extend beyond three water service delivery and into land use regulation, which is a core council function. This allows the potential for overlap between the two, creating uncertainty in terms of land use regulation and enforcement. RDC submits that clarity needs to be provided around these matters before the Bill progresses further.

