



Date: Tuesday 23 February 2021
Time: 10.00 am
Venue: Council Chamber, Municipal Chambers, The Octagon, Dunedin

Council
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01 March 2021

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**OTAGO SOUTHLAND COUNCILS'
SUBMISSION ON THE WATER SERVICES BILL**

The following is a joint submission on behalf of the eight territorial authorities of the Otago and Southland Regions: Central Otago District Council (CODC), Clutha District Council (CDC), Dunedin City Council (DCC), Gore District Council (GDC), Invercargill City Council (ICC), Queenstown Lakes District Council (QLDC), Southland District Council (SDC) and Waitaki District Council (WDC), referred to hereafter as the Otago Southland Councils.

In this submission the Otago Southland Council send a united message from a collective voice, showing our commitment to the Otago / Southland Regions.

The Otago Southland Councils thank the Health Committee for the opportunity to submit on the Water Services Bill (the Bill).

Please note: The Councils **wish/do not wish** to speak to this submission.

1. The Otago Southland Councils

As territorial authorities, a core responsibility of the Otago Southland Councils is provision of three waters services. Other important responsibilities of relevance to matters raised in the Bill include district planning, building regulation, environmental health and safety, and civil defence. Accordingly, the Otago Southland Councils have a keen interest in the Water Services Bill as part of the Three Waters Reform Programme.

Collectively the Otago Southland Councils' territorial areas had a usually resident population of 322,653 people as at the 2018 New Zealand Census¹. Settlement patterns across the two regions are diverse, comprising many small rural communities, 20 urban areas (as defined by Statistics New Zealand²) including Dunedin, New Zealand's seventh largest city, and Queenstown, a key tourist destination.

¹ Stats NZ, 2018 Census Place Summaries, <https://www.stats.govt.nz/tools/2018-census-place-summaries/>

² Stats NZ (2020), Urban accessibility – methodology and classification, www.stats.govt.nz

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2. Support for the intent of the Bill

The Otago Southland Councils are broadly supportive of the regulatory framework outlined within the Water Services Bill and the intent shown to ensure that drinking water supplies across Aotearoa are safe and reliable, particularly in the light of the findings of the inquiry into the Havelock North contamination incident.

Specific areas of support:

- Improved sharing of information between territorial authorities, regional councils, water suppliers and the drinking water regulator (Taumata Arowai) in relation to source water.
- The staged approach to further regulation of wastewater and stormwater services. Integrated regulation for provision of water, wastewater and stormwater services is important, however it is recognised there is lot of complexity to be worked through in the drinking water space alone.

3. Role confusion in the context of proposed service delivery reforms

Throughout the Bill there is confusion around the division of responsibilities between drinking water suppliers, regional councils and territorial authorities, particularly when considered in the context of the proposed service delivery reforms.

The Government's intention to transition delivery of water services from councils to a small number of public multi-regional water entities as part of the Three Waters Reform Programme is not fully understood yet. This makes it difficult for councils to meaningfully provide feedback on the Bill. It is recommended that a mechanism is inserted into the Bill to trigger review of territorial authority responsibilities if/when the new public multi-regional water entities are established.

In the event delivery functions are to be transferred to water entities, it is anticipated that territorial authorities would need to operate under the provisions of the Bill for a short period of time, prior to the creation of new water entities. This raises concern around the amount of work, resources and skills required of territorial authorities for the interim period before water entities are established.

Councils need an understanding of the size, design and responsibilities of the water entities and wider reform programme in order to make informed decisions in the drinking water supply space. For this reason, longer transitional periods should be provided under the Bill, in recognition of the work still required through the service delivery programme reform.

Recommendations

- **Insertion of a mechanism in the Bill to trigger review of territorial authority responsibilities if/when new public multi-regional water entities are established.**
- **Provide for longer transition periods under the Bill in recognition of the work still required through the service delivery reform programme.**

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4. Responsibilities under the proposed Local Government Act 2002 amendments

The proposed amendment to the Local Government Act 2002 (LGA) would introduce requirements for territorial authorities to assess community access to water supplies, work with private water suppliers and take over supply of drinking water where private suppliers are failing. Fulfilling these requirements would require appropriate resourcing, process development and ongoing management. The resourcing and cost burden placed on territorial authorities would be substantial.

Further, in the event water service delivery is transferred to new water entities, it is anticipated that technical staff would also look to move from territorial authorities to these new entities. This would pose additional resourcing challenges, potentially leaving territorial authorities without the capacity or competency to work with private drinking water suppliers.

It is recommended that the requirements for assessment of access to supply and the responsibility to work with / take over from failing private water suppliers should sit with:

- Taumata Arowai during the service delivery transition period, being best placed from a technical perspective to assess community access to drinking water; and
- Either Taumata Arowai or new water entities post-service delivery reform, as at this point the water entities would hold the mandate and technical expertise for supply of drinking water.

Should the proposed LGA requirements remain with territorial authorities post-service delivery reform, or in the event new water entities are not established, a staged implementation plan for the LGA requirements would help to mitigate the resourcing challenge. Provision for a charge back mechanism allowing territorial authorities to recover costs from private water suppliers would also assist.

Recommendations

- The additional responsibilities for territorial authority proposed under the LGA amendments to sit with Taumata Arowai during the service delivery transition, and Taumata Arowai or new water entities post-service delivery reform.

Should the proposed LGA requirements remain with territorial authorities post-reform, provision for:

- A staged implementation plan for the LGA requirements; and
- A charge back mechanism allowing cost recovery from private water suppliers.

5. Sector Capability and Capacity

The Otago Southland Councils wish to voice general concern regarding capability and capacity within the water sector. There are capacity issues for technical expertise at present and are a particular challenge for many territorial authorities.

Capacity issues would be exacerbated by the additional regulatory requirements under the Bill, and due to the timeframes specified. The new requirements for territorial authorities extend far beyond the LGA responsibilities discussed in point 4 above, and collectively would substantially increase the administrative responsibilities of territorial authorities.

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Accordingly, there is a need to prioritise the development of a skills strategy for the water services sector. Consideration should also be given to: including water industry roles on New Zealand Immigration's Skill Shortage List; mechanisms to capture institutional knowledge during service delivery transition periods; directing new water entities to retain technical expertise at a local level; and including knowledge of the operation of three waters services as a mandatory skillset for the Taumata Arowai Board.

Recommendation

- **Prioritise the development of a skills strategy for the water services sector.**
- **Inclusion of water industry roles on New Zealand Immigration's Skill Shortage List.**
- **Capture institutional knowledge during service delivery transition periods.**
- **New water entities to retain technical expertise at a local level.**
- **Amend the Water Services Regulator Act to include knowledge of the operation of three waters services as a mandatory skillset for the Taumata Arowai Board.**

6. Te Mana o te Wai

The Otago Southland Councils support the requirement for all persons who perform or exercise functions, powers, and duties under the Bill to give effect to Te Mana o te Wai. The role Taumata Arowai's Māori Advisory Group will have in providing advice and guidance on how to interpret and give effect to Te Mana o te Wai is important. Clarity around application of this concept in practical terms would be beneficial. The Otago Southland Councils support the application of Te Mana o te Wai being shaped by and evolved through conversations with local iwi as set out in clause 3.2(1) of the National Policy Statement for Freshwater Management 2020.

Recommendation

- **Clarification around application of Te Mana o te Wai in practical terms.**

7. Compliance, Monitoring and Enforcement Strategy

Clause 134 requires Taumata Arowai to prepare a drinking water compliance, monitoring and enforcement (CME) strategy. As drafted, there is no direct obligation on Taumata Arowai to engage with stakeholders or the public in preparation the CME strategy. Opportunity for engagement is considered necessary to ensure buy-in and ultimately the credibility of the strategy.

Further, it is understood that the CME strategy must include Taumata Arowai's intended approach to exemptions issued under clause 56. These exemptions are understood to be the mechanism to ensure the regulations are proportionate to the scale, complexity, and risk profile of a drinking water supply. The Otago Southland Councils consider that there should be transparency around Taumata Arowai's decision-making on the exemptions.

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Recommendation

- **Requirements for engagement on the preparation of the compliance monitoring and enforcement strategy be added to clause 134 of the Bill.**
- **Provide transparency around Taumata Arowai's decision-making on exemptions.**

8. Proposed Resource Management Act 1991 amendments

The Otago Southland Councils support the proposed amendment to s104G of the Resource Management Act 1991 (RMA) requiring assessment of the impacts on drinking water sources through the resource consent process.

The Councils consider it important that drinking water suppliers have opportunity for input on resource consent applications that may adversely affect a drinking water source and are identified as affected parties to consent applications in their drinking water catchments where appropriate.

It is noted that amendments are proposed to the existing National Environmental Standard for Sources of Human Drinking Water Regulations 2007 (NES) as part of the Three Waters Reform Programme. It suggested provision for input of drinking water suppliers into the resource consent process either aligns with or is incorporated into the proposed amendments to the NES.

Recommendation

- **Provide for input of drinking water suppliers into the consent process and align/incorporate this into the proposed amendments to the NES.**

9. Source Water Risk Management Plans

The creation and implementation of Source Water Risk Management Plans (SWRMP) would be a new requirement for many drinking water suppliers, and would require collaboration between territorial authorities, regional councils and the water suppliers.

The roles, actions, and obligations of each party should be clear, for example, the publishing and availability of information about source water.

Additionally, Clause s42(4)(b) requires local authorities to contribute to the development and implementation of SWRMPs and undertake actions to address risks or hazards to a source on behalf of a water supplier as agreed in the plan. Given the large number of water suppliers it may be challenging for territorial authorities to meet these requirements considering the capacity/capability issues in the sector (as per points 4 and 5 above). Clarity is needed on how this is to be operationalised.

Recommendation

- **Provide clarity around territorial authority, regional council and water supplier responsibilities in the creation and implementation of Source Water Risk Management Plans.**

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10. Emergency Powers

The provisions around emergency powers in clause 61 of the Bill raise questions around division of responsibility between territorial authorities and drinking water suppliers.

Clause 61(2)(g) enables Taumata Arowai to direct a territorial authority to supply drinking water to affected persons, while clause 61(2)(h) enables Taumata Arowai to direct a drinking water supplier to make arrangements to ensure that an alternative drinking water supply is available to affected consumers. The territorial authority may not have the ability to act if they are not the drinking water supplier in the area or, in the event new water entities are created, no longer have any role in water drinking supply at all. It is suggested that clause 61(2)(g) is redundant; if the territorial authority is the water supplier, they would be required to act under clause 61(2)(h).

Recommendation

- Delete clause 61(2)(g) of the Bill.

11. Liability of elected officials

The Otago Southland Councils note the broad exemption of elected members of Council from any liability under clause 161 of the Bill. This does not align with the comparatively narrower exemptions of elected members from liability under the Local Government Act 2002 and the Health and Safety at Work Act 2015.

It is acknowledged there is a delicate balance to be found between ensuring people are not afraid of becoming elected members for fear of criminal or civil liability, and making elected members aware of the potential serious health consequences of decision-making, particularly around funding for establishment, operation, maintenance and renewal of drinking water supplies through Long Term Plans and other planning documents.

This is raised as a point of note only; the Otago Southland Councils may provide individual submissions on the Bill in regard to this matter.

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Signed by the following representatives:

[Name]
Central Otago District Council

[Date]

[Name]
Clutha District Council

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Invercargill City Council

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Queenstown Lakes District Council

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Southland District Council

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Waitaki District Council

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