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Enquiries to: Alejandro Cifuentes

Waikato
REGIONAL COUNCIL
Te Kaunihera ā Rohe o Waikato
Private Bag 3038
Waikato Mail Centre
Hamilton 3240, NZ

waikatoregion.govt.nz
0800 800 401

13 February 2025

Finance and Expenditure Committee
New Zealand Parliament

Email: fe@parliament.govt.nz

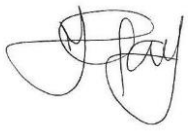
Tēnā koutou katoa,

Waikato Regional Council Submission on the Local Government (Water Services) Bill

Thank you for the opportunity to submit on the Local Government (Water Services) Bill. Please find attached the Waikato Regional Council's (the council's) submission, formally endorsed by the council's Strategy and Policy Committee on **13 February 2025**.

Should you have any queries regarding the content of this document please contact Alejandro Cifuentes, Team Leader, Policy Implementation directly on (07) 859 2786 or by email Alejandro.Cifuentes@waikatoregion.govt.nz.

Ngā mihi nui,



Tracey May
Director Science, Policy and Information

Submission from Waikato Regional Council on the Local Government (Water Services) Bill

Introduction

1. We appreciate the opportunity to make a submission on the Local Government (Water Services) Bill (the Bill).

2. Waikato Regional Council (the council) recognises the importance of addressing key challenges behind New Zealand water infrastructure and local government funding. We support the intention of the Bill to ensure water services are safe, reliable, environmentally resilient, customer-responsive and delivered at the least cost to consumers and businesses. The council supports in principle the changes oriented to improve the system governance, economic regulation and customer protection.

3. The main focus of the council's submission is on the changes related to the Resource Management Act 1991 (RMA) – chiefly, consent duration and the predominance of environmental performance standards over rules – by way of general comments and recommendations on specific clauses of the Bill. Our mains points are summarised below:

    a. The case for amendments related to consent duration and predominance of environmental performance standards are not supported by evidence in the regulatory impact statements released with the Bill. Due to their potential negative impacts on regional plan rules and the regional objectives for water quality, we request that these be removed from the Bill.

    b. These amendments will also affect Treaty legislation specific to the Waikato River: Te Ture Whaimana o Te Awa o Waikato – Vision and Strategy for the Waikato River (Te Ture Whaimana). It is unclear how the policies of Te Ture Whaimana could be met in all cases given the inability to include a requirement that is more restrictive than a performance standard where the policies in Te Ture Whaimana to restore and protect water quality would not be otherwise achieved by the standard.

    c. We seek changes to consent process changes proposed by the Bill, particularly the ability to deem applications for systems that comply with the standards to be non-notified; restrictions on the imposition of conditions; and the disapplication of sections 105 and 107.

    d. We request that the Water Services regulator (rather than consent authorities) enforces stormwater and wastewater environmental performance standards. Requiring this responsibility of consent authorities imposes an unfunded mandate and a significant obligation on consent authorities without regard for local authority capacity.

    e. We note that the Bill lacks a future climate change orientation, thus not giving effect to the direction under s7(i) of the RMA to have particular regard to the effects of climate change, when exercising functions and powers under this Act, in relation to managing the use, development, and protection of natural and physical resources.

4. We look forward to future consultation opportunities and would welcome the chance to comment on any issues explored during their development.

Waikato Regional Council
Private Bag 3038
Waikato Mail Centre
Hamilton 3240

Contact person:

Alejandro Cifuentes
Team Leader, Policy Implementation
Email: Alejandro.Cifuentes @waikatoregion.govt.nz
Phone: (07) 859 2786

A new single standard for wastewater and stormwater environmental performance

We request removing clauses 268, 269, 320 and 330, and all consequential amendments to ensure environmental performance standards do not prevail over local authorities' plan rules (rules) or RMA national direction; and

We recommend:

1. Carrying out further assessment to develop a regulatory framework where the Water Services system complements the RMA.; and

2. Carrying out further analysis to fully understand the implications of the Bill on Treaty settlement legislation; and

If the current drafting of the Bill remains, then we request providing for more stringent rules enabled through plans where these are designed to give effect to treaty settlement legislation to recognise Te Ture Whaimana o Te Awa o Waikato.

We also note the Bill creates an unfunded mandate for local government authorities to enforce the observance of stormwater and wastewater environmental performance standards.

5. Although the council acknowledges that the power to set environmental performance standards and infrastructure design standards for wastewater and stormwater is not new, previously these standards have not overridden otherwise applicable rules/policies.

6. Providing for the setting of environmental performance standards for stormwater and wastewater that prevail over rules relating to resource management by Order in Council, risks the statutory power in the Bill being inconsistent with fundamental constitutional principles, including the rule of law. This provision limits local government authorities' ability to deliver on the expectations set with the community through the RMA's consultation processes. Decisions on plan rules (which include activity status) are normally the result of the democratic process under Schedule 1 of the RMA and judicial ruling by the Environment Court. Having the ability to prepare environmental performance standards that could be contrary to the outcome of the plan-making process, whilst limiting the ability of councils to have more stringent rules, is likely to infringe on the principle of natural justice. In this respect we note the following:

    a. We were unable to find a comprehensive reasoning to justify overriding regional rules and policy documents in the Bill and its supporting information (Regulatory Impact Statements or the Departmental Disclosure Statement). We recommend the select committee carries our further investigation to understand the implication of this provisions.

    b. While the process of setting performance standards requires consultation with relevant agencies, the proposed provisions lack consultative rigour that is required of regional councils to prepare regional rules. As drafted, the Bill does not provide a statutory recourse for the community to challenge the standards set if they are inappropriate or unworkable.

    c. Under section 27(1) of the New Zealand Bill of Rights, "every person has the right to the observance of the principles of natural justice by any Tribunal or other public authority which have the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law." An environmental performance standard prepared without the full benefit of consultation might result in more stringent rules that limits a council's ability to deliver on district or regional plan objectives for freshwater. For example, it may impact the Waikato Regional Council's ability to meet water quality and quantity targets for our

drainage recorded in the Waikato Regional Land Drainage Management Plan,[1] based on permitted or controlled regional plan rules, recorded in the Waikato Regional Land Drainage Management Plan.

d. The overriding of regional rules and policy threatens the achievement by regional councils of water quality objectives in their regions, particularly if a "one size fits all" approach to the setting of standards is taken. A case in point is overallocated catchments due to nutrient discharge – where the nutrient balance will have to be found in another part of the catchment or through other consent holders, if the performance standard authorises a discharge that results in allocation limits identified by the regional council being exceeded.

e. The setting of performance standards, by definition, has no regard to catchment context. In catchments we've identified as sensitive (such as Piako nearing its nutrient limit), we need to address this by reducing sources of nutrients in the catchment. In relation to point source discharges under the purview of the RMA, the most suitable way to address this is at the point of discharge, which (in relation to wastewater and stormwater) we would be unable to do under the RMA changes proposed by the Bill.

f. A set performance or design standard is expected to produce a discharge with standard characteristics. However, the environmental effects of these discharges also depend upon the nature and quality of the receiving environment. A set discharge/system standard ignores variability in the receiving environment, but there is no "standard" receiving environment: its ability to assimilate contaminants varies in both time and space. With climate change factored in, assimilation capacity may become reduced over time as flow decreases and temperature increases.

g. The RMA consenting framework allows for assessment of effects of the discharge in the receiving environment to set limits based on other features of the resource. For example, it may be necessary to reduce nutrients in one situation, while providing for invertebrates, and recreation values and public access elsewhere.

7. We note that although the Minister for the Environment can introduce rules that change activity statuses pursuant to a National Environmental Standard, this is a process that provides an opportunity for people and organisations to be engaged. Furthermore, national direction sets a clear rule framework to decide all applications under the RMA. The Bill would result in a set of rules being applicable under the Water Services framework, and another one under the RMA, which is unlikely to result in a reduction of *the regulatory burden of the drinking water quality regime and improve proportionality in the application of regulatory powers*.

8. We recommend carrying out further assessment to create a regime where the Water Services system complements the RMA. This will allow for regional variations in meeting the objectives of both acts, and the purpose stated in s 3 of the Water Services Act 2021 (WSA) – *providing a source water risk management framework that, together with the Resource Management Act 1991, regulations made under that Act, and the National Policy Statement for Freshwater Management, enables risks to source water to be properly identified, managed, and monitored.*

Te Ture Whaimana o Te Awa o Waikato (Vision and Strategy for the Waikato River)(Te Ture Whaimana) and the Waikato context

9. We are concerned about the lack of clarity regarding the relationship between the performance standards and Te Ture Whaimana.[2] Given the primacy of the standards over plan rules and national direction, we are concerned that Te Ture Whaimana, being part of the Waikato Regional Policy Statement (WRPS), could be overridden by the environmental performance standards. This is despite

[1] https://www.waikatoregion.govt.nz/assets/WRC/PS201914.pdf
[2] https://waikatoriver.org.nz/wp-content/uploads/2019/03/Vision-and-Strategy-Reprint-2019web.pdf

Te Ture Whaimana existing as legislation on its own right outside of the WRPS and being intended as the primary direction-setting document for the Waikato River catchment.

10. Te Ture Whaimana is intended by Parliament to be the primary direction-setting document for the Waikato and Waipā Rivers and activities within their catchments affecting the rivers. As a result, Te Ture Whaimana:
    a. prevails over any inconsistent provision in a national policy statement, New Zealand coastal policy statement, or national planning standard; and
    b. in its entirety is deemed to be part of the Waikato Regional Policy Statement; and any regional plan or district plan that affects the Waikato River or the Waipā River or activities within their catchments must give effect to Te Ture Whaimana.

11. We are particularly concerned about the potential effects of the Bill on the objectives expressed in the proposed Waikato Regional Plan Change 1 (PC1) to the Waikato Regional Plan, currently on appeal before the Environment Court.

12. We also note that while the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 addresses the relationship of Te Ture Whaimana with particular Acts, there is no provision which describes its relationship with unspecified Acts. The Bill thus results in a tension between Treaty settlement legislation and the Water Services system, due to this unclear relationship between the two.

Unfunded mandates

13. Proposed new s 58JA(6)(a) requires consent authorities to *enforce the observance of stormwater environmental performance standards and wastewater environmental performance standards to the extent to which their powers enable them to do so* [underline added]. This imposes an unfunded mandate, plus the underlined wording imposes a significant obligation which has no regard to local authority capacity. We request amending a 58JA(6)(a) as follows (delete strikethrough text):

    (6) Every local authority and consent authority must—
    (a) enforce the observance of stormwater environmental performance standards and wastewater environmental performance standards ~~to the extent to which their powers enable them to do so; and~~
    (b) observe stormwater environmental performance standards and wastewater environmental performance standards.

14. We consider the regulatory impact analysis for this section needs to be more comprehensive to satisfy the 2021 edition of the legislative guidelines due to its impact on local authorities and consent authorities.

A 35-year consent duration

Remove clause 277 to allow for a case-by-case assessment, that accounts for localised effects and specific merits of an application to determine the duration of a resource consent; and All consequential amendments needed; and Carry out further analysis to fully understand the implications of the Bill on Treaty settlement legislation. If the current drafting of the Bill remains, then provide for more stringent regulations where these are designed to give effect to treaty settlement legislation – i.e. Te Ture Whaimana for the Waikato River. We request further analysis to ensure that, if environmental performance standards prevail over rules, this will not preclude the ability of consenting authorities to review consent conditions under section 128 of the RMA.

15. Further to our comments on clause 277 in this submission, we highlight the lack of appropriate assessment to support blanket 35-year consent durations. The proposed amendment to s 123 of the RMA to require a consent application which meets either the environmental performance standard or the infrastructure design standard, to be granted for 35 years, is not supported by evidence.

16. The council does not support a 35-year consent duration, as we consider the blanket and mandatory duration (for systems that either meet the performance standard or design standard) ignores the existence of a range of other matters that are relevant in a resource management context, and that may justifiably support a shorter duration. We suggest that a more suitable alternative might be to develop regulations that are more prescriptive on how to consider infrastructure investment and life of the assets for consenting decisions. Any discussion around consent duration should take into account the lifetime of the asset; a consistent approach to this is likely to result in a higher degree of certainty for infrastructure owners.

17. Additionally, we consider clause 279 could be interpreted as a limitation on the ability of consenting authorities to review consent conditions, when read in the context of new section 58JA (inserted by clause 269), where environmental performance standards prevail over rules. This could prevent regulators from considering current state of technology and the environment. More appropriate consent conditions improve compliance outcomes. We consider further clarity is needed, to avoid an interpretation that limits a council's ability to review conditions under section 128 of the RMA, and recommend adding a subclause to new section 58JA as follows (adding underlined text):

    58JA Relationship between wastewater and stormwater environmental performance standards and other instruments
    (…)
    <u>(8) Subsection (1) does not limit the ability of a consent authority to carry out a review of consent conditions pursuant to section 128 of the Resource Management Act 1991.</u>

18. The primacy of the standards over rules in a plan, coupled with the 35-year consent duration would make the load management process harder. An operator could build new infrastructure that meets the national standard and be allowed to operate despite a local authority having identified an environmental limit. This would create a situation where instead of modifying consent conditions or giving a different duration, a regulator would need to set new standards for all contaminants not covered by the current one.

19. To achieve a community-agreed nutrient target within a receiving body (e.g. river) may require the setting of limits on the loads of nutrients within the system. Where reductions in nutrient loads are required to meet the target (e.g. reductions required for Waikato River at Tuakau in PC1), there is an expectation that everyone in the catchment will contribute to those reductions. If operators operating under the Water Services Act are exempt from reducing their contribution to the loads (because they are meeting the environmental performance standard) then the load reductions will fall on others (e.g. farming sector). That would be unreasonable in some catchments. The ability for catchment-specific standards would enable all contaminant contributors to bear their fair share of reductions.

20. An assessment to determine a consent duration balances a wide range of factors including community expectations in the context of future uncertainty around environmental effects, costs and economic efficiency and "security of supply" related to the operation of the asset. Setting a 35-year consent duration via legislation will not allow for local nuances in the state of the environment and changes in technology.

21. Similar to our comments in the preceding section of this submission, a set duration of a consent would constrain the effective implementation of Te Ture Whaimana. Chiefly, the objective of adopting a precautionary approach towards decisions that may result in significant adverse effects on the Waikato River, and particularly those effects that threaten serious or irreversible damage to the Waikato River.

22. Alternatively, the Crown could consider a similar approach to the duration of coastal permits for aquaculture activities under s 123A of the RMA, where the minimum duration is 20 years, and the maximum is 35 years. This section was introduced as part of the Resource Management Amendment Act 2011 and in its assessment of regulatory effects,[3] the Crown identified benefits of flexibility to account for uncertainty about environmental effects and community expectations.

RMA direction relating to climate change

The Bill does not include an appropriate assessment of the impacts of climate change and does not contain provisions that will enable the consideration of these impacts when making decisions under the Water Services Act. The lack of assessment may result in the legislation enabling decisions that worsen environmental effects from waste and stormwater discharges.

23. We note the lack of climate change future orientation with the Bill. This is particularly concerning for the aspects related to the intent to regulate for a standard design for wastewater treatment plant discharges without any reflection of the receiving environment's ability to assimilate the discharged contaminants in the face of an increasingly dynamic climate-changed future.

24. Climate change effects are already warming receiving waters during summer months, lowering lake levels and slowing water flows. Warming of the receiving waters reduces their capacity to hold dissolved gasses such as dissolved oxygen in solution, which is critical for the assimilation of contaminants. This, coupled with an increase in the rate of bio-chemical reactions (metabolic rates as most aquatic life are thermal conformers) means that some contaminants are lethal at lower concentrations than would be the case at other times. We consider that this element of the proposal lacks scientific rigour.

25. The potential risks are exacerbated by consequential changes to RMA, as there would be no ability to regulate the discharge quality from wastewater treatment plants. This has potential for tension

[3] https://www.mpi.govt.nz/dmsdocument/6301/direct

with section 7 of the RMA (for climate change adaptation) and for Te Ture Whaimana. Regional councils should as a minimum have the ability to prevent discharge into a waterway that cannot cope with standard discharge into the future and require land based treatment (spray irrigation) or recycling. This has particular relevance to northern areas characterised by warm, low volume, slow flowing and nutrient enriched water bodies (receiving environments).

Comment on specific clauses

Provision	Submission
Part 3, Subpart 7 – Management of stormwater networks *(cl 164-169)*	We support the purpose of this subpart is to address the issue of unclear, siloed, or overlapping responsibilities for managing stormwater impacts in urban areas. We request including a requirement to consult with regional councils when preparing risk management plans for the management of stormwater management networks. We recommend amending clause 168 as follows (add underlined text): **168 Preparation and publication of plan** (1) The water service provider must— (a) give the Water Services Authority a draft of its proposed stormwater network risk management plan within a time frame notified in the *Gazette* by the Water Services Authority; and (b) develop a final plan that gives effect to any comments made by the Water Services Authority on the draft plan; and (c) give to the Water Services Authority the final plan within a time frame notified in the *Gazette* by the Water Services Authority; <u>and</u> <u>(d) consult with the relevant local government authority in charge of managing stormwater discharges under the Resource Management Act 1991.</u>
Part 5, Subpart 7, cl 269: New RMA s 58JA and 58JB - relationship between wastewater and stormwater environmental performance standards, and infrastructure design solutions, and other instruments *Also* Part 5, Subpart 9, cl 328 and 330	We note that additional to the Governor General's ability to set wastewater and stormwater environmental performance standards by order in council, which prevail over a regional rule, they can also set infrastructure design standards. Although these are not mandatory, where they are adopted, the Bill provides that the relevant environmental performance standard is deemed to have been met. Therefore, we infer adoption of a specified design standard also prevails over regional rules. <u>We request that this relationship between the design standards and RMA rules be clarified, and if found to have the same effect as the environmental performance standards, then it be removed as part of the consequential amendments related to our submission point in the general part of this document</u>. Having resource management standards being introduced with an out-of-RMA mechanism (which include responsibilities and costs around implementation) is likely to have a negative impact beyond plan administration; overriding regional rules threatens the achievement of the purpose of the rules/plan, and relevant National Environmental Standards. As mentioned before in this submission, our particular concern in the Waikato Region is the potential effect on the Waikato River, the objectives for which are expressed in PC1, currently on appeal before the Environment Court. The concern is exacerbated by the lack of clarity regarding the relationship between the performance standards and Te Ture Whaimana (Vision and Strategy). Therefore, the council requests:

	Removing clauses 268, 269, 320 and 330, and all consequential amendments to ensure environmental performance standards do not prevail over local authorities' plan rules (rules) or RMA national direction; and That the Select Committee carry out further analysis to fully understand the implications of the Bill on Treaty settlement legislation. Further, we note that there is a high degree of uncertainty, given that the performance standards or infrastructure design solutions have not yet been released. The Bill also refers to possible "exceptions," which are yet unknown. It is difficult to provide meaningful feedback without that information. As noted in our comments in relation to the standards, proposed new s 58JA(6)(a) requires consent authorities to *enforce the observance of stormwater environmental performance standards and wastewater environmental performance standards to the extent to which their powers enable them to do so.* This imposes a further unfunded mandate and an absolute and unduly onerous obligation which has no regard to local authority capacity. Further to our request to better align regulation between the Water Services system and the RMA, we request this responsibility remains with the Water Services regulator.
Part 5, Subpart 7, cl 271 and 272	We disagree with the statutory ability to deem a consent application which complies with a performance or design standard, as non-notified (ref. clauses 271 and 272) because, by definition, doing so only takes account of the discharge quality and/or the infrastructure design. We believe these should still be notified. When considering the effects of an activity for the purposes of notification, all resource management effects are generally considered. For example, a sewage discharge may have significant adverse effects on local iwi due to cultural concerns about sewage disposal to a location from which tuna (eels) are taken. That consideration would be bypassed altogether as a result of clauses 271 and 272 and iwi would have no rights of participation in the process. While it is true that now some rules in plans and NESs (mostly controlled activities) are explicitly deemed to be non-notified, these decisions have been taken through a public process and have had regard to all potential effects that are relevant in a resource management context, neither of which apply in respect of the processes under clauses 271 and 272.
Part 5, Subpart 7, cl 273: amended RMA s104D(2D)	Clauses 273(1) and (2) propose an amended RMA s 104D(2D) which requires that the consenting authority not grant a consent contrary to a wastewater performance or design standard and that any consent granted must include, as a condition of granting the consent, *requirements that are no more or less restrictive than is necessary to give effect to* the performance or design standard. There are two issues with this:

	1. The "or" in (2)(a) means that non-compliance with <u>either</u> a performance standard or a design standard means the application cannot be granted. This is contrary to proposed s 139B of the WSA which makes compliance with a design standard non-mandatory (but where it is applied, deems it to meet relevant performance standards). So an application which meets the performance standard but not the design standard would fail to satisfy s 104(2D)(2)(a) and could not be granted. We consider this is surely not intended. 2. Specifying that conditions must be "no more or less restrictive than is necessary to give effect to" the standards restricts the consenting authority's powers to impose conditions generally, e.g. effects which relate to matters other than the quality of the discharge or design of the system (like odour). If this is in fact the legal effect of this drafting, it is an inappropriate restriction of the council's powers under section 108 of the RMA. Therefore, we request the following: <u>Retain the current wording of section 104(2D).</u> The current enacted provision is clear enough, provides flexibility to include more stringent conditions and avoids the conflicts previously noted in relation to infrastructure design solutions. We have similar concerns in respect of a stormwater performance standard as per clauses 273(3) and (4). We also note a possible error in the proposed wording of the new RMA s 104(2DA) – inserted by clause 273(3). Section 104(2DA)(a) would limit the application of s 104(2D) (as amended) but sub-clause 104(2DA)(b) seems to re-instate it, thus limiting the application of (2D) whilst s104(2DA) repeats the direction of s 104(2D)(a) to not grant consents contrary to the standard. <u>We recommend reviewing the wording of these two sections to ensure statutory direction is not contradictory.</u> As noted in our general comments, without having the environmental performance standards available it is unclear how the policies of Te Ture Whaimana (Vision and Strategy for the Waikato River) could be met in all cases given an inability to include a requirement that is more restrictive than a performance standard where the policies in Te Ture Whaimana to restore and protect water quality would not be otherwise achieved by the standard. We request that the legislation provides this ability.
Part 5, Subpart 7, cl 274 and 275: Disapplication of RMA s 105 and 107	RMA changes proposed to sections 105 and 107 would require those sections to disapply if the stormwater or wastewater discharge meets the specified standards or a specified infrastructure design solution. The dis-application of section 105 where either a performance or design standard is met is inappropriate. **Section 105 is a mandatory requirement to consider receiving water sensitivity which is not something that either a performance standard nor a design standard can consider**. Similarly, the dis-application of section 107 in the same circumstances is inappropriate, given the "bottom line" nature of the effects specified in section 107(1). Further, the Bill does not provide a justifiable reason to disapply these standards.

	If this provision signals that performance or design standards might be so "low" as to potentially result in the section 107(1) effects occurring, then that is cause for significant concern. Therefore, we request: Removing clauses 274 and 275; and carrying out all consequential amendments. If performance standards contribute to degradation referred to in section 107(1) RMA – effects in some receiving environments – then a disproportionate burden or barrier is placed on dischargers who are not water services operators. The council will only be able to focus on the dischargers not regulated by WSA, controlling the contribution of their activities on those parts of the receiving environment where the bottom-line effects have not yet been crossed, or in requiring a reduction in those effects in already degraded waterways, whilst unable to do the same for operators acting under an environmental performance standard. This will result in a disproportionate burden to contribute to water quality protection or improvement for dischargers who are not water services providers and have consents assessed and granted under the provisions of the National Policy Statement for Freshwater Management, section 105 RMA, and Te Ture Whaimana. Efforts of non-water service providers to protect or improve water quality through their discharges could be undermined where there are discharges meeting stormwater or wastewater environmental performance standards in the same waterway or catchment.
Part 5, Subpart 7, cl 277: New RMA ss 123(aa) and (ab) to set 35 years duration of consent	As per our comments in previous parts of this submission, we request Removing clause 277 to allow for a case-by-case assessment, that accounts for localised effects and specific merits of an application to determine the duration of a resource consent; and Carrying out further analysis to fully understand the implications of the Bill on Treaty settlement legislation. If the current drafting of the Bill remains, then providing for more stringent regulations where these are designed to give effect to treaty settlement legislation – i.e. Te Ture Whaimana for the Waikato River.
Part 5, Subpart 7, cl 278: Amends RMA s 124 for Exercise of resource consent while applying for new consent	Changes to section 124 (exercise of consent while applying for a new consent) would enable expired stormwater or wastewater consents to continue to be exercised for a duration "specified in the environmental performance standard". The council does not support the changes to section 124, as it is not clear how this power would work and what the rationale for setting a duration in the performance standard would be.

	We request removing clause 278. The council anticipates that this will allow the operator to continue to operate under the expired consent for a period after they get their new consent to allow time for a new system to be constructed and become operational before operating under the new consent. However, this would create an unnecessary level of complexity. Section 124 RMA already provides for the exercise of an expired resource consent.
Schedule 9 of the Bill which inserts new Part 8 of Schedule 12 into the RMA	Allowing a consent holder operating under section 124 to withdraw their application and prepare a new one that complies with a wastewater or stormwater environmental performance standard – which enables them to continue to operate under section 124 for up to 6 months starting on the date of withdrawal – has potentially problematic outcomes for an applicant, by limiting the timeframe under which they can continue to operate under previous consents while awaiting new consents that comply with the standards to be granted. The wording suggests that the 6-month period after the date of withdrawal may include the preparation of a standard-complying application as well as consent processing. Even if it only applies to consent processing there may be instances where the 6-month period is insufficient due to information request and response timing, objections, appeals, etc. We recommend carrying further analysis to identify a more suitable time period.
Part 5, Subpart 9, cl 304: Complete removal of Te Mana o Te Wai from Water Services Act	We recommend retaining the provisions that relate to the application of Te Mana o te Wai (TMOTW), and as a result removing clause 304. Requiring every person acting under the WSA to "give effect to" TMOTW *to the extent applicable in the circumstances*, is consistent with the general policy approach in the NPS-FM. We note that despite the restriction recently introduced by the RMA amendments to apply the hierarchy of obligations, TMOTW is still part of the policy direction for freshwater policy. The removal of TMOTW from the WSA limits the ability for complementary approaches between the WSA and the RMA. This is particularly important given the Bill's intention to use the environmental performance standards as a determinant to resource consent decisions.
Part 5, Subpart 9, cl 331	We reiterate our comments on Part 5, Subpart 7, cl 273 (amended RMA s104D(2D)), related to the statutory effect of compliance with a specified infrastructure design standard, equalling to compliance with the relevant environmental performance standard. We request amending clause 331 (amending new section 139B) as follows: **139BInfrastructure design solutions** (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, and following consultation undertaken by the Water Services Authority in accordance with section 53 with each stormwater network operator, wastewater network operator, regional council, mana whenua, and any other person it considers appropriate, make regulations to set infrastructure design solutions that set the following matters for wastewater and stormwater infrastructure: (a) technical performance standards:

	(b) treatment processes: (c) design requirements: (d) operating requirements. (2) An infrastructure design solution set by regulations under **subsection (1)** may— (a) specify all consent requirements for wastewater or stormwater infrastructure: (b) identify circumstances in which a person must not rely on part or all of the infrastructure design solution: (c) specify the activity status under the Resource Management Act 1991 of some or all of the activities that are included in the infrastructure design solution: (d) identify whether, in respect of the activities included in the design solution, the consent authority— (i) is precluded from giving public notification of an application for a resource consent; (ii) is precluded from giving limited notification of an application for a resource consent. (3) Compliance with an infrastructure design solution is not mandatory. ~~(4) However, if wastewater or stormwater infrastructure complies with an infrastructure design solution, it is deemed to meet the relevant environmental performance standard.~~ ~~(5)~~ (4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
Clause 4	This clause contains two different definitions of "watercourse". We recommend either retaining only one definition or merging the two to keep alignment with the context of the WSA. For ease of reference, we note the two definitions below: **watercourse** means a watercourse that is part of, or related to, the drainage or discharge of stormwater by a stormwater network And **watercourse** includes a river, stream, passage, and channel on or under the ground, whether natural or not, along which water flows, whether continuously or intermittently
Clauses 144, 148, 150 and 154	Similar to our comments on preparing risk management plans, <u>we request including a requirement to consult with the relevant regional council when preparing drinking water catchment plans for the management of stormwater management networks.</u>

	We consider it appropriate that there should be a clear, positive obligation on the territorial authority to consult with the relevant regional council in developing the plan, given the regional function under section 30(1)(c)(ii) RMA for the control of the use of land for the purpose of the maintenance and enhancement of the quality of water in water bodies. The same also applies to clause 148 which relates to the review of catchment plans. A similar approach would also be appropriate for trade waste plans which must be made and reviewed by territorial authorities under clauses 150 and 154 respectively.
Clause 177	We recommend adding a definition of sewerage drains. This clause provides that wastewater discharge to "sewerage drains" is not a contravention of the RMA, but that the discharger is liable under the RMA for discharges from "sewerage drains." However, there is no definition of "sewerage drains."