



**OUR
DISTRICT**

Proposed Treated Water Supply Bylaw

Staff report on submissions and recommendations for consideration

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1. Background

On 25 February 2021, the Council agreed a new bylaw is appropriate to regulate the supply of treated water in the Far North District. On 4 May 2021 the Strategy and Policy Committee approved a proposal for a new Treated Water Supply Bylaw to be released for public consultation. The period during which people could make submissions on the proposal was 8 to 31 May 2021. Thirteen submissions were received.

This report analyses the submissions and makes recommendations for amendments to the draft Treated Water Supply Bylaw. A numbered list of people who made submissions is in the Appendix and these numbers are used to refer to the individual submissions in the body of this report.

Council staff from the following teams contributed to the analysis of the submissions:

- Strategy Development
- 3 Waters Planning
- Infrastructure Planning
- Rating Services

Ventia, the Council’s Far North Waters Alliance partner, also provided advice on technical issues raised in the submissions.

2. Summary of submissions

Thirteen submissions were received, with eleven of these received online using a submissions form that asked people to say if they were “in favour”, “opposed” or “unsure” regarding the nine parts of the draft bylaw. Those general responses are summarised in the following table.

Part of the draft bylaw	Number of online submissions			
	In favour	Opposed	Unsure	Total
1. Purpose and interpretation	5	4	2	11
2. Descriptions of the treated water supply system and its parts	5	5	1	11
3. Terms and conditions	4	6	1	11
4. Process for getting approvals	4	6	1	11
5. Protection of the water supply system from damage or misuse	4	5	2	11
6. Charges for water supply	3	5	3	11
7. Offences and penalties	4	5	2	11
8. Savings and transitional provisions	5	5	1	11
9. Diagrams illustrating parts of the water supply system	5	4	1	10 [1 submission did not comment on the diagrams]

Where the submissions opposed a Part and made suggestions for changes, those suggestions are included in the analysis in section 4 of this report.

The remaining two submissions were made offline. They were generally supportive of the draft bylaw, but suggested some changes to Parts 2, 3, 4 and 7 and are again included in the analysis in section 4 of this report.

3. General feedback

The following feedback was received that is not related to a specific clause in the draft bylaw.

3.1 Recognition of Te Mana o te Wai and the 3 Waters Reforms

Submission 10 said the draft bylaw needs to recognise Te Mana o te Wai. The submission also said the Council needs to recognise the 3 Waters Reforms in designing the bylaw.

Staff analysis

“Te Mana o te Wai” is a central concept of the National Policy Statement for Freshwater Management 2020. It is a statement of principles that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and wellbeing of the wider environment. These principles protect the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community. There is a hierarchy of obligations within Te Mana o te Wai as follows:

- First, to the health and well-being of water bodies and freshwater ecosystems
- Second, to the health needs of people
- Third, to the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future

Council staff consider Te Mana o te Wai is recognised in the draft bylaw by:

- Enabling pre-emptive water restrictions to maintain minimum low flows in streams that supply the District’s water schemes. Northland Regional Council sets minimum low flow levels for streams to protect their health and ecology.
- Ensuring public health by:
 - protecting the treated water system from contamination using backflow prevention devices
 - stipulating that only the Council or its agents may make connections or repairs to the treated water supply
 - requiring that all fittings are kept in good repair to avoid contamination of treated water
 - establishing rules for work near water mains to prevent damage to these mains that could result in contamination of the water supply.
- Providing for the social and economic well-being of people and communities, for example by setting rules for bulk tanker operators to supply treated water to those not on the reticulated network.

In the report to the Council that recommended a new bylaw be made [25 February 2021, Agenda item 6.3, document number A3083951, pages 53 - 60 refers], Council staff acknowledged the 3 Water reforms may make the proposed bylaw obsolete at some stage. However, as it was unclear what these reforms will involve, the report recommended the Council should make a new bylaw to replace the current Water Supply Bylaw 2009 before it is automatically revoked on 16 October 2021. It is still unclear what the 3 Water reforms will involve and the recommendation to make a new bylaw still holds.

Staff recommendation

Council staff recommend no changes in response to this submission.

3.2 The proposed bylaw is in breach of the Treaty of Waitangi

Two submissions (3 and 4) asked for the following:

“An official internal independent investigation under the official information and privacy act into the treated water bylaw.

1.what treatment is going into our water supply?

- 2. is the water we are drinking 100% pure?*
 - 3. does the treatment have any effects on the human body?*
 - 4. what are the health concerns to our water being treated?*
 - 5. who are you supplying the treated water to?*
 - 6. who are the owners of the water you are supplying to the public?*
 - 7. has any communication negotiations between iwi and council [occurred] concerning their rights under the te tiri o waitangi 1840 concerning our waterways?*
 - 8. does the council have Maori wards in concerning indigenous rights to our waterways?*
 - 9. environmental law human rights acts indigenous rights acts te tiriti o waitangi 1840 must be uses concerning this treated water bylaw”*
- [We want] a full public report into this official investigation into the treated water bylaw to be made public”*

Staff Analysis

These questions are being treated as a request under the Local Government Official Information and Meetings Act 1987 by the Council’s Legal Services Team. As these questions only indirectly apply to the proposed bylaw, they do not need to be considered in drafting the bylaw.

Staff Recommendation

Council staff recommend no changes in response to these submissions.

4. Analysis and recommendations regarding the bylaw wording

The following section analyses the submissions made about clauses in the draft bylaw and recommends how to address these submissions in the bylaw.

4.1 Clauses not referred to in submissions

No submissions were made about the following clauses in the draft bylaw:

- Clause 1 Title
- Clause 2 Commencement
- Clause 3 Application
- Clause 4 Purpose
- Clause 5 Interpretation
- Clause 6 Treated water supply system
- Clause 8 Point of supply for different types of ownership
- Clause 10 Supply of treated water for extinguishing fires
- Clause 16 No compensation for water restrictions
- Clause 17 Work on the treated water supply system
- Clause 18 Applications for supply
- Clause 19 Applications for other purposes
- Clause 24 Objections
- Clause 25 Renewing an approval
- Clause 26 Amending an approval
- Clause 27 Transferring of approval
- Clause 28 Suspending or cancelling an approval
- Clause 29 Other obligations not affected
- Clause 30 No connection to other water supplies or fittings
- Clause 32 Prevention of contamination
- Clause 36 Water supply bylaw revoked

4.2 Staff recommendations for drafting clarification

Legal advice was received suggesting a number of amendments to clarify the meaning of several clauses, as covered below

Re Clause 4 Purpose

Council staff recommend adding the following words to clause 4 “This applies to the supply of treated water from council-owned water schemes, not privately owned schemes” as shown by the Track Changes below:

“The purpose of the bylaw is to:

- (a) fairly and efficiently manage treated water supply in the district;
- (b) ensure public health and safety;
- (c) protect council’s assets, namely the treated water supply system;
- (d) protect the public from nuisance; and
- (e) protect the treated water supply system from misuse.

This applies to the supply of treated water from council-owned water schemes, not privately owned schemes”

Subclause 5 (2) to be replaced with a new clause 2

Council staff recommend a minor drafting change to subclause (2) of Clause 5 (Interpretation). This subclause describes what the “Related information” boxes in the bylaw do. This is better placed at the start of the bylaw and could be worded more clearly. Staff therefore recommend subclause (2) be deleted from clause 5 and a new clause 2 inserted into the bylaw as follows:

“2 Related information boxes

Boxes headed “Related information” in this bylaw are for information purposes only, and –

- (a) they do not form part of this bylaw; and
- (b) cannot be considered in the interpretation or application of a provision of this bylaw; and
- (c) may be inserted, amended or removed without any formality.”

This will result in all subsequent clauses in the bylaw being renumbered. However, this report uses the clause numbers as they were in the draft bylaw that was published for consultation.

Clause 21 to be amended

Council staff recommend a number of minor changes to clause 21 (Assessment of applications) to make clear that this clause does not refer to “assessment criteria” but to “considerations” by council. These changes are shown by the Track Changes below:

“The council must assess all applications for approvals ~~in accordance with the following criteria~~ by considering the following matters as applicable to the application –

- (a) the purpose for which the water will be used;
 - (b) how much water is required;
 - (c) any documented record of the applicant's non-compliance with this bylaw or any previous water supply bylaw, or **approvals** granted under such bylaws;
 - (d) whether approving the application could detrimentally affect the **council’s** ability to supply treated water at the volume and/or pressure required for firefighting;
 - (e) whether the **approval** may negatively affect the safe and efficient operation of the **treated water supply system**, the health and safety of any person, or the environment.
- (2) When assessing applications to take bulk water from tanker filling points (see clause 10(1)(a)) the **council** must also ~~assess~~ consider –
- (a) the suitability of the water tanker for transporting bulk water; and
 - (b) the location the water will be transported to.
- (3) When assessing applications to take water from metered **standpipes** on **hydrants** (see clause 11(1)(b)) the **council** must also ~~assess~~ consider whether there are any suitable alternative options to source the treated water.
- (4) When assessing applications for a temporary exemption from water restrictions or prohibitions (see clause 18(d)) the **council** must also ~~assess~~ consider whether the restrictions have, or are they likely to have, a significant negative impact on the applicant’s business or personal situation.
- (5) When assessing applications for **approval** to do work over or near the **treated water supply system** (see clause 17(3) to (7)) the **council** must also ~~assess~~ consider whether the work can be carried out safely without damaging **council’s** assets if appropriate conditions are put in place.”

Clause 22 to be amended

Council staff recommend changing clause 22 (Deciding on an application) to make clear that this clause does not refer to “assessment criteria” but to “considerations” by council and to simplify the wording. These changes are shown by the Track Changes below:

- “(1) The **council** may grant or decline an application for an approval ~~if it satisfied the application meets the assessment criteria at its sole discretion based on consideration of the factors~~ described in clause 22.
- ~~(2) The council may decline an application for an approval if it does not meet the assessment criteria in clause 22.~~
- (2)** An **applicant** may withdraw their application at any time before a decision is made, but any fee paid with the application will not be refundable unless the **council**, in its absolute discretion, decides that a refund (or partial refund) is reasonable in the circumstances.”

Clause 25 to be amended

Council staff recommend amending clause 25 (Renewing an approval) to make its requirements clearer and to cross-refer to clauses 22 and 23. These changes are shown by the Track Changes below:

- “(1) If an **approval** has a condition specifying a duration for the **approval**, the person granted the **approval** may apply to the **council** to renew the **approval**, before the end of its duration, by:
- (a) informing the **council**, in writing, the **approval** is still necessary; and
- (b) providing any information requested by the council demonstrating to demonstrate that any conditions under Clause 23 are being met continue to be met.
- ~~(2) An application for renewal must be made in the same manner as an application for an approval, with any necessary modifications.~~
- (3) The application will be assessed based on consideration of the factors described in clause 21.”

Clause 26 to be amended

Council staff recommend amending clause 25 (Amending an approval) to indicate that the considerations listed in clause 21 will apply when council assesses the application. These changes are shown by the Track Changes below:

- “(1) A person granted an **approval** may –
- (a) at any time within the duration of the **approval**; or
- (b) at any time if the **approval** does not have a duration specified in its conditions –
- apply to the **council** to amend the **approval** or its conditions.
- (2) An application for amendment must be made in the same manner as an application for an **approval**, with any necessary modifications.
- (3) The application will be assessed based on consideration of the factors described in clause 21.”

Clause 28 to be amended

Council staff recommend adding the words “or the health and safety of any person” after “the water supply system” in subclause (1)(b) of clause 28 (Suspending or cancelling an approval) as indicated using track changes below:

- “(1) The **council** may suspend or cancel an **approval** if –
- (a) any conditions are not being met;
- (b) the **approval** is affecting the efficient and safe operation of the water supply system or the health and safety of any person.”

4.3 Submissions on clauses in the draft bylaw

Clause 7 Point of supply

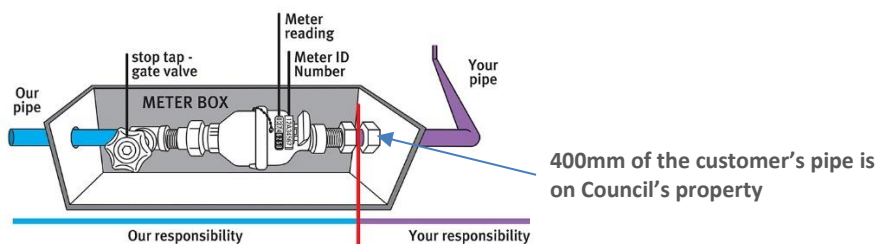
Clause 7 describes the point of supply of treated water to customers, which marks the boundary of responsibility between the **customer** and **council**.

Submission received

Submission 11 noted that Figure Two in the Schedule to the draft bylaw (which illustrates the point of supply) shows they “*may have ownership and responsibility of the supply pipe outside of our legal boundary*”. They suggested the responsibility of each party should commence at the legal boundary.

Staff analysis

Operational staff confirm that 400mm of the customer’s service pipe is on Council property. As the diagram below shows, the point of supply within the meter box is just after the meter reader. The Council cannot be responsible for a section of pipe after the meter reader and it would be impracticable to have a meter box partially in public land and partially in private land so that the point of supply is exactly on the legal boundary.



Staff recommendation

Amend clause 7 by adding the following “related information” box after subclause (3):

Related information

Approximately 400mm of the service pipe between the meter reader and the customer’s pipe is technically on council-owned property. Any work required by the customer on this section of the customer’s pipe is acceptable to the council.

“Tracked changes” to the clause as recommended to be amended

- (1) The **point of supply** to an individual **customer** is the point on the **service pipe** which marks the boundary of responsibility between the **customer** and **council**.
- (2) As described in the **engineering standards** the **point of supply** to the **customer** should normally be located on the road reserve boundary. This applies to all properties including properties on rear sections accessed by a right of way.
- (3) The typical layout of the fittings at the **point of supply** is illustrated in Part 2 of the Schedule to this bylaw.

Related information

Approximately 400mm of the service pipe between the meter reader and the customer’s pipe is technically on council-owned property. Any work required by the customer on this section of the customer’s pipe is acceptable to the council.

- (4) Where there is a **backflow prevention device** then the **point of supply** is the point which is directly downstream of the backflow prevention device.
- (5) Where there is no **backflow prevention device** then the **point of supply** is the point which is directly downstream of the water meter.

Clause 9 Types of treated water supply

Clause 9 defines two types of supply that can be provided from the Council's water supply system, namely ordinary and extraordinary supply.

Submission received

One submission (11) commented that the definitions meant their water supply is "extraordinary supply" and asked the Council to clarify the specific conditions and limitations for their extraordinary supply.

Staff analysis

The submission has not correctly interpreted the definition. The customer currently receives both ordinary and extraordinary supply. However, clause 9 does not specifically state that customers can have **both** ordinary **and** extraordinary supply, which may be why this customer misinterpreted the definition. Council staff have contacted this customer and discussed the conditions and limitations of their supply. The customer is seeking some certainty about their supply during times of drought and the Council's staff will develop suitable terms of supply with the customer for this purpose.

Staff recommendation

Amend the "related information" box after clause 9(5) by adding the words: "Customers can receive both ordinary and extraordinary supply."

"Tracked changes" to the clause as recommended to be amended

Related information

Examples of **extraordinary supply** include treated water used for the following purposes:

- filling a residential spa or swimming pool
- water for a fixed residential garden irrigation system
- irrigation water used for agriculture, horticulture or viticulture
- commercial and industrial purposes other than for drinking water
- **fire protection systems** within buildings

Customers can receive both ordinary and extraordinary supply.

Clause 11 Other types of water supply

Clause 11 states there are other types of supply other than ordinary and extraordinary supply which people must apply for, namely bulk supply of water from tanker filling points and water supply from metered standpipes on hydrants.

Submission received

One submission (12) noted that bulk water tanker operators must be registered with the drinking water regulator.

Staff analysis

Council staff have determined bulk water carriers must be on the drinking water register maintained by the Director-General of Health.

Staff recommendation

Amend clause 11 by adding the following new subclause (3) and “related information” box:

“(3) A person who wants water supplied under subclause (1)(a) must be registered with the drinking water regulator.”

Related information

The Director-General of Health maintains the drinking water register. Under section 69G of the Health Act 1956, the drinking water register means the register of drinking water suppliers and supplies maintained under section 69J of the Health Act 1956, which in to bulk water carriers.

“Tracked changes” to the clause as recommended to be amended

- (1) Other than water used for **ordinary** or **extraordinary supply**, and water used for firefighting purposes, the **council** may supply two other types of treated water:
 - (a) bulk supply of water from tanker filling points;
 - (b) water supply from metered **standpipes** on **hydrants**.
- (2) A person who wants water supplied under subclause (1) must apply to the **council** for approval of that supply.
- (3) A person who wants water supplied under subclause (1)(a) must be registered with the drinking water regulator.

Related information

The Director General of Health maintains the drinking water register. Under section 69G of the Health Act 1956, the drinking water register means the register of drinking water suppliers and supplies maintained under section 69J of the Health Act 1956, which includes bulk water carriers.

Clause 12 Interruptions to the supply made by council

Clause 12 describes planned and unplanned interruptions made by the Council to ordinary or extraordinary supply. Planned interruptions are for planned maintenance or other planned work, while unplanned interruptions are to carry out emergency inspections or repair work on the treated water supply system. This clause says that 24 hours' notice must be given by the Council for planned interruptions, while no notice is required for unplanned interruptions.

Submissions received

Two submissions (11 and 12) commented on clause 12. Both suggested different notice periods for the interruption of supply. Submission 11 suggested 48 hours for planned interruptions and 4 hours for unplanned interruptions. Submission 12 suggested planned interruptions should not last for more than 8 hours to be consistent with section 69S(3) of the Health Act 1956.

Staff analysis

The Council's operational staff advise that 48 hours' notice is normally given for planned interruptions, but occasionally this is not possible, and 24 hours' notice is appropriate as a minimum. Submission 12 is correct, the maximum period for a planned interruption, as stated in the Health Act 1956, is 8 hours.

As unplanned interruptions are required to carry out emergency work, providing advance notice is not possible. However, staff are working on improving real-time communication with customers using digital platforms to alert them to these unplanned interruptions.

Staff recommendation

Amend clause 12 by adding the following "related information" box after subclause (2):

Related information

Section 69S(3) of the Health Act 1956 states a maximum timeframe of 8 hours for a planned interruption to supply, after which the supplier must have taken all reasonable steps to notify affected parties.

"Tracked changes" to the clause as recommended to be amended

- (1) The council may interrupt the **ordinary** or **extraordinary** supply of treated water for the following purposes:
 - (a) planned maintenance or other work ("**planned interruptions**"); or
 - (b) to carry out emergency inspections or repair work on the **treated water supply system**, to ensure the health or safety of any person, or to avoid or minimise damage to the system or property ("**unplanned interruptions**").
- (2) For **planned interruptions** the **council** will take all reasonable steps to provide 24 hours' written notice of the interruption and plan the work to minimise disruption and inconvenience to the **customer**.

Related information

Section 69S(3) of the Health Act 1956 states a maximum timeframe of 8 hours for a planned interruption to supply, after which the supplier must have taken all reasonable steps to notify affected parties.

- (3) For **unplanned interruptions**, the **council** may interrupt the water supply without first notifying the **customer**.
- (4) If a **customer** has a need for an uninterrupted level of supply (in terms of flow, pressure, or quality), it is the responsibility of that **customer** to provide any storage, back-up facilities, or equipment necessary to provide that level of supply.

Clause 13 Meters

Clause 13 states that if a customer suspects a meter is inaccurate, they can apply to the Council to have it tested and if a meter is found to be reading incorrectly after testing, the Council may make an adjustment to the customer's account.

Submission received

Submission 9 suggested that testing of meters should be undertaken proactively by Council staff, rather than in response to customer requests.

Staff analysis

Council staff proactively ensure that meters are functioning accurately in two main ways:

- Planned meter renewals – on an annual basis older or high usage meters are replaced with new meters to ensure readings are accurate.
- Reviewing water bills before invoicing – all water bills are reviewed before invoicing. This process identifies unusual (high or low) readings that may suggest a meter has been misread or is not functioning correctly.

Staff received legal advice that “permissible tolerances” for testing water meters mentioned in subclause (4) should be defined.

Staff recommendation

Include a “related information” box after subclause 4:

Related information

The council applies a tolerance of $\pm 3\%$ to determine whether a customer's water meter is reading incorrectly

“Tracked changes” to the clause as recommended to be amended

All **ordinary supply** and **extraordinary supply** of water to any property must have a water meter except where **council** has approved otherwise.

- (2) The **customer** must keep the meter clear and readily readable at all times.
- (3) Any **customer** who disputes the accuracy of a meter or restrictor may apply to the **council** for it to be tested, provided that it is not within six months of the last test.
- (4) If a meter, after being tested, is found to be reading incorrectly, the **council may** make an adjustment **to the customer's account** in accordance **with the test results** after due allowance for permissible tolerances.

Related information

The council applies a tolerance of $\pm 3\%$ to determine whether a customer's water meter is reading incorrectly.

Clause 14 Demand management

Clause 14 refers to restrictions the Council may put in place to manage the demand for treated water. For example, restrictions may be applied if the raw water supply is low due to low rainfall, or if a major leak requiring maintenance work is detected in the water supply system.

Submissions received

Submissions 9 and 11 said that clause 14 needs to state the Council will provide an adequate supply of drinking water as required under the Health Act 1956. Submission 12 said this clause should refer to the Health Act 1956 which says that a water supplier cannot “*restrict the supply of drinking water to less than an adequate supply for non-payment of fees*”.

Staff analysis

The Council has received legal advice confirming it can put in place restrictions on the supply of non-potable water before a drought or other emergency is declared. This is for health and safety reasons under section 145 of the Local Government Act 2002 as a precautionary step to avoid running out of water.

Council staff agree the bylaw should make it clearer that ‘demand management’ cannot restrict the adequate supply of drinking water. Staff also consider that clause 14 should state that restrictions or prohibitions can cover any purpose (except drinking water), any period and apply to any of council’s customers

The draft bylaw does not have provisions to restrict water supply for non-payment of fees. The Council has received legal advice that these matters are already covered in the Health Act 1956 and the Local Government Act 2002 and therefore do not need to be included in the bylaw.

Staff recommendation

Make the following changes to clause 14:

1. Add a new subclause (1):
“(1) If required to reduce demand for treated water, the **council** may restrict or prohibit the use of treated water for:
(a) any specified purpose, excluding **drinking water**; or
(b) any specified period; or
(c) any of its customers”.
2. In subclause (2) - previously subclause (1) - add the words “, excluding drinking water” after the words “treated water”.
3. Add the following text to the “related information” box:
“The Council can put in place treated water restrictions for health and safety reasons under section 145 of the Local Government Act 2002 as a precautionary step to avoid running out of water. As of June 2021, these restrictions are explained on the waterwise website ([Be water wise](#) | [Be water wise Northland](#)) as follows:
Level Two: No sprinklers
Level Three: No hoses or sprinklers
Level Four: Essential use only - water supplied can only be used for drinking or cooking, to wash clothes and take showers”

“Tracked changes” to the clause as recommended to be amended

- (1) If required to reduce demand for treated water, the **council** may restrict or prohibit the use of treated water for:
 - (a) any specified purpose, excluding **drinking water**; or
 - (b) any specified period; or
 - (c) any of its customers.
- (2) The **customer** must comply with any restrictions advised by the **council** to manage the demand for treated water, excluding **drinking water**.
- (3) Such restrictions will be advised by **public notice**.

Related information

The Council can put in place treated water restrictions for health and safety reasons under section 145 of the Local Government Act 2002 as a precautionary step to avoid running out of water.

For example, restrictions may be applied if the raw water supply is low due to low rainfall, or if a major leak requiring maintenance work is detected in the water mains.

As of June 2021, these restrictions are explained on the waterwise website (Be water wise | Be water wise Northland) as follows:

Level Two: No sprinklers

Level Three: No hoses or sprinklers

Level Four: Essential use only - water supplied can only be used for drinking or cooking, to wash clothes and take showers

Clause 15 Emergency water restrictions

Clause 15 describes emergency restrictions that may be applied by the Council in a drinking water emergency; for example, when a drought is declared or if the water supply is contaminated.

Submission received

Submission 11 asked for a definition of the term “emergency” in the bylaw and noted that emergency water restrictions can only be declared by the Minister of Health under section 69ZZA of the Health Act.

Staff analysis

Council staff consider that a definition of “drinking water emergency” and an explanation of the various ways that a drinking water emergency can be declared should be included in the bylaw to provide clarity for customers.

Staff recommendation

1. Make the following changes to clause 15:

- (a) Replace subclause (1) with: “(1) During a drinking water emergency, the **council** may restrict, interrupt or prohibit the use of treated water.”
- (b) Add a “related information” box after subclause (2):

Related information

Examples of a **drinking water emergency** are when:

- drought or water supply shortage has been identified;
- water supply has been polluted or contaminated;
- water supply infrastructure requires emergency repairs;
- a natural failure or a disruption to the water supply occurs which is likely to endanger public health

2. In clause 5 (Interpretation), insert the following definition of drinking water emergency and a “related information” box, in the appropriate alphabetical order:

“Drinking water emergency means a situation where water supply restrictions or interruptions may arise from:

- (a) water supply shortage or drought; or
- (b) water supply contamination or pollution; or
- (c) water supply infrastructure emergency repair; or
- (d) a natural failure or disruption to water supply which may endanger public health.

These emergencies may be initiated by following authorities: the Minister of Health, the Medical Officer of Health, the Regional Council, the council, and the Civil Defence Emergency Management Group.”

Related information

In section 4 of the Civil Defence Emergency Management Act 2002 the definition of emergency includes failure or disruption to a lifeline utility. An entity that supplies or distributes water to inhabitants of a city or district is a lifeline utility.

Section 69S of the Health Act 1956 provides the council may restrict or interrupt the supply of water in the event of emergency repairs, but must notify the medical officer of health within 24 hours, and take all practicable steps to advise affected persons.

Section 69T of the Health Act 1956 provides the council must notify authorities if it identifies or foresees a risk to the adequate supply of drinking water and request these authorities apply their powers to

mitigate the water supply risk. The authorities include the medical officer of health, Fire and Emergency New Zealand, and the Northland Regional Council.

Section 69ZZA of the Health Act 1956 provides for the Minister of Health to declare a drinking water emergency if there is a serious risk of harm to public health arising from drinking water or if there is a lack of drinking water available.

Section 329 of the Resource Management Act 1991 provides the Northland Regional Council the right to issue water shortage directions which may restrict water takes.

“Tracked changes” to the clause as recommended to be amended

- (1) ~~During an emergency the council may restrict, interrupt or prohibit the use of treated water for any specified purpose, for any specified period, and for any its customers~~ During a **drinking water emergency**, the council may restrict, interrupt or prohibit the use of treated water.
- (2) Restrictions or prohibitions made under subclause (1) will be advised by **public notice** unless otherwise permitted by emergency legislation.

Related information

Examples of a **drinking water emergency** are when:

- drought or water supply shortage has been identified;
- water supply has been polluted or contaminated;
- water supply infrastructure requires emergency repairs;
- a natural failure or a disruption to the water supply occurs which is likely to endanger public health

Clause 20 Making an application

Clause 20 describes the three key elements required in an application for approval – completing the form required by the Council, paying the applicable fee and including all information required by the Council.

Submission received

Submission 9 said the form required by the Council should be *“user-friendly, easy to understand, and very clear what information is necessary”*. This submission also said that refunds should apply: a) a partial refund if the Council fails to provide an answer in the agreed time and b) a full refund if an approval is not possible to maintain, through no fault of the customer.

Staff analysis

Council staff agree the application form should be user friendly, easy to understand and very clear. This will be addressed as part of the implementation of the new bylaw.

In terms of offering refunds, the Council’s fees are set on a cost recovery basis reflecting the work involved to grant an approval. Therefore, it would not be appropriate to partly or fully refund these fees.

Staff recommendation

No change.

Clause 21 Assessment of applications

Clause 21 sets out how applications will be assessed including applications to take bulk water from tanker filling points.

Submission received

Submission 12 noted that water tanker operators must have a current registration with the drinking water regulator.

Staff analysis

This submission also related to clause 11 and is addressed in the analysis and recommendation about that clause.

Staff recommendation

No change.

Clause 22 Deciding on an application

Clause 22 states the Council may grant an application for an approval if it is satisfied the application meets the assessment criteria described in clause 21.

Submission received

Submission 9 said there should be a set timeframe for council to respond – *“maybe 20 working days”*.

Staff analysis

The Council’s operational staff do not recommend a specific processing timeframe be stated, due to the variability of connections applications, which often require input from contractors where the time required to receive this input is out of Council’s control. Staff endeavour to process connection applications as efficiently as possible.

Staff recommendation

No change.

Clause 23 Conditions placed on approvals

Clause 23 states the Council may include conditions on an approval relating to the purpose for which the supply of treated water is approved, the duration of the approval, the quantity of water that may be supplied, and any other relevant matters.

Submission received

Submission 11 said *“This clause potentially contradicts the Health Act, by placing a condition on the quantity of water supplied where it falls below the minimum that provides an adequate supply of drinking water”*.

Staff analysis

It is not the intention of this clause for the quantity of drinking water to be restricted below an adequate supply. The wording of the clause should make this clear.

Staff recommendation

Amend subclause 23(c) by adding the words “, except where drinking water is involved”.

“Tracked changes” to the clause as recommended to be amended

The **council** may include conditions on any **approval** for any one or more of the following matters:

- (a) the purpose for which the supply of treated water is approved;
- (b) the duration of the approval;
- (c) the quantity of water that may be supplied, except where drinking water is involved;
- (d) any other matter the **council** considers is reasonable to ensure efficient and safe operation of the **treated water supply system**.

Clause 31 Fittings to be in good repair

This clause states the Council may require a customer to repair pipes and fittings that are faulty, and the customer must comply with a notice to repair within 5 working days.

Submission received

Submission 9 said that 10 to 15 days would be fairer than 5 days to conduct repairs. They also suggested the Council should support those who lack available finances to conduct this work: *“If the occupier fails to carry out the work due to lack of available finances the council will support the occupier with a claim to WINZ for assistance and supply a plumber at a reasonable price to carry out the works”*.

Staff analysis

The Council’s operational staff recognise that, in general, a longer period than 5 working days would be fairer for customers. However, shorter timeframes are needed where water loss is an issue.

Council staff recognise that some customers may struggle to pay for repairs. Support could include the Council writing a letter to WINZ explaining why the repair is required. However, supplying a plumber at a reasonable price would be outside the Council’s role. These matters can be addressed on a case-by-case basis and will be considered as part of the implementation of the new bylaw.

Council staff discovered a typographical error in subclause (4), the word “shall” should be the word “must” in accordance with current legislation drafting style.

Staff recommendations

Make the following changes to clause 31:

1. In subclause (3) delete the words “5 working days” and substituting the words “10 working days, except if the notice is given under subclause (2)(c), where the customer must comply within 5 working days”.
2. In subclause (4) delete the word “shall” and substitute the word “must”.

“Tracked changes” to the clause as recommended to be amended

- (1) A person must not allow any pipe, tap, or other fitting connected with the water supply on their premises to be out of repair or in any way defective so that water is wasted, misused or contaminated.
- (2) Where, in the opinion of the **council**, any pipe, appliance or fitting connected to the water system at any premises:
 - (a) has deteriorated; or
 - (b) is of inferior quality or workmanship; or
 - (c) is causing or is likely to cause waste of water; or
 - (d) is insufficient for the proper supply of waterthe **council** may require, by notice in writing, the **customer** to carry out any work the council considers is necessary to remedy the pipe, appliance or fitting.
- (3) The **customer** must comply with a notice given under subclause (2) within ~~5 working days~~ 10 working days, except if the notice is given under subclause (2)(c), where the customer must comply within 5 working days.
- (4) Subject to the provisions of the Local Government Act 2002, the customer ~~shall~~ must allow the council and its agents to enter the property with or without equipment, access any area of the property for the purposes of determining compliance with these requirements.

Related information

Under section 171(1) of the Local Government Act 2002 the council cannot enter a dwelling house to

determine compliance.

- (5) If the occupier fails to carry out the work required by the **council**, the **council** or its agent may make the repair at the occupier's expense.

Clause 33 Access to inspect and maintain

Clause 33 says the Council may enter private land to read water meters and to inspect, test, or maintain the treated water supply system. In addition, under emergency conditions the Council may enter private land without notice at any hour to maintain or repair the treated water supply system.

Submission received

Submission 9 suggested the time of day for an entry onto private land should be agreed with the owner.

Staff analysis

Agreeing a time of day with an owner would unnecessarily restrict the ability for staff to efficiently carry out their work such as meter reading or tracing water leaks. Giving 24 hours' notice, as currently stated in subclauses (1) and (2), should allow the owner or occupier to inform the Council if there are any issues that Council staff should be aware of when entering the property. In an emergency situation under subclause (3), urgency is required and giving notice or agreeing a time would be inappropriate.

Staff recommendation

No change.

Clause 34 Charges

Clause 34 states the charges relating to the treated water supply system are listed in the council's Fees and Charges Policy.

Submission received

Submission 2 said that *"No upper limit on charging ... is problematic"*

Staff analysis

Under section 150(4) of the Local Government Act 2002 the Council is not allowed to recover more than the reasonable costs incurred for the matter for which the fee is charged. In effect this does place an upper limit on the fees that are charged.

Staff recommendation

No change.

Clause 35 Offences

Clause 35 states that people who fail to comply with the bylaw commit an offence and under the Local Government Act 2002 they are liable on conviction, to “a fine not exceeding \$20,000”.

Submissions received

Submission 13 pointed out that the maximum amount of a fine in the draft bylaw is ‘\$20,0000’ (i.e. with an additional zero) not \$20,000. In addition, two submissions (8 and 9) said there is no need for any penalties.

Staff analysis

There is a typographical error in the amount of the fine.

The penalties for breach of a bylaw are stated in the Local Government Act 2002 and the “related information” box after clause 35 accurately refers to those provisions. Council staff are trained to use other methods to ensure compliance, with penalties only applied as a last resort for serious offenders.

Staff recommendation

Amend the “related information” box after clause 35 by deleting the term “\$20,0000” and substituting the term “\$20,000”.

“Tracked changes” to the clause as recommended to be amended

Any person who breaches this bylaw commits an offence under section 239 of the Local Government Act 2002.

Related information

A person who is convicted of an offence of breaching this bylaw is liable to a fine of up to ~~\$20,0000~~ \$20,000 under section 242 (4) of the Local Government Act 2002.

Examples of breaches of this bylaw include:

- use of ordinary supply for extraordinary purposes,
- use of extraordinary supply for purposes other than specified by **council**
- not meeting the conditions of an approval
- not complying with a restriction or prohibition on the use of treated water without a temporary exemption granted by the **council**
- work on the **treated water supply system** without an approval
- connecting to or disconnecting from the **treated water supply system** without approval
- failure to remedy deficient pipes

Clause 37 Applications, approvals etc under previous bylaw

Clause 37 states that licences, permits and approvals granted under the previous Water Supply Bylaw will continue until their date of expiry or, if no expiry date is specified, they will expire 12 months after the new bylaw commences. Also, any applications made before the new bylaw commences will be dealt with by the Council as if they were made under the new bylaw.

Submission received

Submission 11 asked for specific confirmation of the licences, permits, dispensations, permissions or other forms of approval that apply to their premises and to clarify what happens when their current approval expires.

Staff analysis

Operational staff are discussing the specific details of the arrangements directly with the person who made the submission. In addition, this enquiry indicated that the new bylaw needs to clarify that arrangements for ordinary supply made under the previous Water Supply Bylaw will not expire.

Staff recommendation

In subclause (1) add the words “, except for ordinary supply approvals,” after the words “in clause 36”.

“Tracked changes” to the clause as recommended to be amended

- (1) Every licence, permit, dispensation, permission or other form of approval granted under the Water Supply Bylaw revoked in clause 36, except for ordinary supply approvals, that were in force immediately before the commencement of this bylaw, continues in force as if it is an approval of that kind issued under this bylaw; but:
 - (a) it expires on the date specified in that approval; or
 - (b) if no expiry date is specified, it expires on the date 12 months after the commencement of this bylaw.
- (2) Any application for a licence, permit, dispensation, permission or other form of approval made under the Water Supply Bylaw revoked in clause 36, filed before the day on which this bylaw commenced, must be dealt with by the council as if it was made under this bylaw.
- (3) Any meter which was installed by the **customer** before the commencement of this bylaw must continue to be maintained by the customer until it is, in the opinion of **council**, no longer fit for use, when it will be replaced by a **council** meter.

APPENDIX 1 – LIST OF SUBMISSIONS RECEIVED

Number	Full name	Organisation
1	Llani Harding	Individual submission
2	Greg Smith	Individual submission
3	Rosana Pou Ferguson	Manuel Pou Family Whanau Trust
4	Francis Jackie Pou Maroroa	Manuel Pou Family Whanau Trust
5	Jonathan Natusch	Individual submission
6	Michaela Radenkovic	Individual submission
7	Yvonne Steinemann	Individual submission
8	Carl Mather	Individual submission
9	Carol Sumner	Individual submission
10	John Tiatoa	Ministry for the Environment
11	Ricki Freemantle	Department of Corrections
12	Dr Bart Willems	Nga Tai Ora - Public Health Northland
13	Rolf Mueller-Glodde	Individual submission