

22 December 2023

Charles Barker  
Director of Regulatory Services  
Wellington Water  
**By email**

Copies to:

Greater Wellington Regional Council  
Wellington City Council  
Porirua City Council  
Hutt City Council  
Upper Hutt City Council  
South Wairarapa District Council  
Fire and Emergency New Zealand

Te Rūnanga o Toa Rangatira  
Taranaki Whānui ki te Upoko o te Ika a Maui  
Public Health Agency  
National Public Health Service  
Te Aka Whai Ora  
National Emergency Management Agency  
Wellington Regional Emergency Management Agency

Tēnā koe Charles

### **Notification of risk to the ongoing supply of a sufficient quantity of drinking water in the Wellington Region**

Thank you for your letter of 22 November 2023 and the associated briefings at which Wellington Water Limited (**WWL**) has shared its perspective on the potential shortage of drinking water in the Wellington Region in late January or early February 2024.

I note that staff from our respective organisations, along with those from other agencies with an interest in the matter such as Greater Wellington Regional Council (**GWRC**) and the Wellington Region Emergency Management Office (**WREMO**), have been working together in recent months in an effort to form a common understanding of the situation outlined in your letter, the risks it presents, and to develop plans to address those risks.

While you will be broadly aware of the position of Taumata Arowai in light of the discussions we have had, this letter acknowledges and responds to the formal notifications in your earlier correspondence.

It also emphasises our concern to ensure that WWL and its local authority owners do everything reasonably possible to prevent the anticipated shortage and have an actionable plan in place if it does happen. I return to this below.

### **Acknowledgement of formal notification and request for assistance**

I acknowledge your formal notification that WWL considers its ability to maintain the supply of a sufficient quantity of drinking water in the Wellington Region is or may be at imminent risk, for the purposes of s 26(1)(a) of the Water Services Act 2021 (**WSA**).<sup>1</sup>

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<sup>1</sup> Paragraphs 11 and 12 of your letter.

Your letter also asks Taumata Arowai, along with other agencies, to use statutory powers to assist WWL to continue to provide a sufficient quantity of drinking water to its consumers.<sup>2</sup> Section 26(1)(b) of the WSA is invoked to support this.<sup>3</sup>

In the case of Taumata Arowai, that involves a specific request to declare a drinking water emergency under the WSA once certain conditions exist and to then exercise powers that such a declaration makes available.

I understand your desire for a degree of certainty as to whether Taumata Arowai is likely to exercise these powers, to help you plan your approach to management of the anticipated water shortage.

Taumata Arowai cannot express a concluded position on that ahead of time, as any decision will be contingent on the specific circumstances that materialise and the outcome of mandatory prior consultation with the Minister of Local Government before any emergency is declared.<sup>4</sup>

For now, I can confirm that we are examining whether the situation you have outlined in your letter and your proposed trigger conditions – the imposition of Level 4 water restrictions under WWL’s restriction classification system – have at least the potential to satisfy the threshold test for the declaration of a drinking water emergency. I anticipate conveying our view on that early in the New Year, along with the factors we consider particularly relevant to our decision-making.

A key part of the test is whether the situation presents a ‘serious risk to public health’,<sup>5</sup> which has elements of both likelihood and consequence. We are working with officials from the Public Health Agency (part of the Ministry of Health, Manatū Hauora) and the National Public Health Service (part of Health New Zealand, Te Whatu Ora) to inform our view of the public health risks arising from the circumstances you have described.

To declare a drinking water emergency and to exercise powers in the manner you have asked, we would also need to understand the environmental effects of the short-term taking of water beyond existing resource consent limits and the ramifications for Te Mana o te Wai. Consultation with GWRC, as the relevant consent authority under the Resource Management Act 1991 (**RMA**), mana whenua and anyone else Taumata Arowai considers appropriate would be required.<sup>6</sup>

It is also important to recognise that the declaration of a drinking water emergency would make a range of powers available to Taumata Arowai.<sup>7</sup> Those might be exercised, for example, to direct consumers to reduce their water use or the cancellation of public events or gatherings that might impose large burdens on the water supply network. Taumata Arowai would need to determine which powers would be most effective in all the circumstances; it should not be assumed that directing WWL to take water beyond existing consent conditions and exempting it from associated RMA requirements would be the most appropriate or only option.

Our ability to evaluate these matters and to express a view in response to your request is reliant on the information available to us. My email to you on 13 December 2023 requesting information on various aspects underscores this, while also highlighting the need for regular reporting so that we

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<sup>2</sup> Paragraphs 11, 38 and 55 of your letter relate to Taumata Arowai.

<sup>3</sup> Note that s 26(1)(b) only refers to local authorities, rather than Taumata Arowai, in relation to requests for the exercise of relevant powers.

<sup>4</sup> WSA, s 59(3).

<sup>5</sup> WSA, s 59(1) and (2). Note this is distinct from the ‘imminent risk’ to a supplier’s ability to maintain a sufficient quantity of drinking water referred to in s 26(1) of the WSA.

<sup>6</sup> WSA, s 65(2).

<sup>7</sup> WSA, s 62(2).

have up-to-date information about how the real-world situation is tracking relative to WWL's modelling. Thank you for the information you arranged in response to that request, which was provided on Wednesday evening. Our team is now examining it and will likely have further questions once it they have worked through it.

### **Preventing a water shortage is paramount**

Regardless of whether emergency powers or other regulatory tools are available and ultimately need to be used, it is the strong view of Taumata Arowai that WWL and its local authority owners must do everything reasonably possible to keep providing a sufficient quantity of drinking water to consumers within existing resource consent limits.

Your letter describes some of the supply augmentation, network operation and demand management options that WWL has considered to reduce the risk that a sufficient quantity of drinking water may not be able to be supplied.

It concludes that these will collectively be inadequate to eliminate the risk, with the fallback position being to take water beyond existing resource consent limits.

Given the significance of the risks you have identified and the contemplated exercise of emergency powers, I would expect that these options would have received very close scrutiny. I am concerned that they may have been dismissed too readily, or that other reasonably available options have not been sufficiently canvassed.

While we are still working through the information WWL provided on 20 December, particular concerns are:

- **Public communications:** I would expect to see plans for an increase in the use of appropriate communication mechanisms and channels as water restriction levels increase, for example: plans for outdoor signage, radio advertising and mail drops in addition to traditional media and digital content. While the communications plan you provided to us on 20 December refers to the use of a wide range of mechanisms and channels, it does not specify what will be done differently as restriction levels increase or how particular audiences will be targeted.
- **Demand management:** Your letter discusses the use of water restrictions and water conservation messaging to reduce consumer demand. A four-level scale is described, with Level 4 being the threshold you have identified as the trigger for declaration of a drinking water emergency.<sup>8</sup> However, even at this level the essential elements of a restriction are a ban on outdoor water use and reduced indoor water use. All prior levels refer to outdoor residential water use activities. There is no reference to restriction of non-residential activities, prioritisation of essential water uses, or the like. The water supply bylaws of WWL's territorial authority owners all appear to enable the imposition of more aggressive restrictions, particularly in emergency situations. It is unclear whether, or to what degree, WWL has explored this.<sup>9</sup>

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<sup>8</sup> The indications in your letter are that the risk indicators for Level 4 are a 1-day average demand in excess of 210 ML/d, with headroom between 5% and 0%. I note WWL's 'Activation Operational Framework' indicates there may be other relevant criteria too.

<sup>9</sup> Paragraph 51 of your letter asks WWL's owner local authorities to make bylaws to restrict the use of water by commercial consumers. On the face of existing bylaws, this ability may already exist.

- **Significant commercial or event-based water users:** One option that may help with the management of water demand over the critical summer period is to examine tailored restrictions for large scale users of water, including public events. Are there commercial or industrial consumers who place significant demands on the network? Has WWL engaged with facility operators (e.g. Wellington Regional Stadium, the Basin Reserve, large regional community facilities, etc) to determine what events are scheduled, what attendance numbers are expected, and how that may transiently affect network demand?
- **Alternative water supplies, particularly for critical customers:** It is encouraging to see that WWL's 'Critical Customer Framework' document identifies public health and safety providers/services, vulnerable customers, and lifeline infrastructure providers as priority consumers. However, it is not currently clear whether or how alternative supplies of water will be made available to these consumers if the normal operation of the network is disrupted. Prior planning for where alternative water may be sourced (including through water carriers), how it will be distributed, and how that will be triggered by different source water or network performance parameters is required. The information currently available also does not describe the decision-making protocols or processes that determine how the network will be operationally managed to prioritise critical consumers.
- **Supply augmentation:** Related to the point above, consideration should be given to the use of supplementary water sources to augment the network, including the potential use of existing community water stations that abstract from surface water or groundwater sources (along with any implications for relevant resource consents).
- **Ongoing reporting:** Thank you for the information WWL has provided in response to my request of 13 December. Initial observations are that some aspects are high-level and unable to be interpreted effectively without a much greater volume of underlying technical information. Some of it, including key strategic documents, is also still marked as draft and it is unclear whether or how the development and implementation of this is tracking.

To help provide assurance that all reasonable options are being exhaustively considered and that WWL's legislative duty to provide a sufficient quantity of drinking water will continue to be complied with, I would be grateful for your response to the issues above and any other relevant information you think informs them by 12 January 2024.

I would also like relevant personnel from our organisations to work together early in the week of 8 January to clarify the information that WWL can usefully provide by way of weekly reporting. This would be based on the list in my email to you of 13 December, but I am open to a format and content that balances the need for Taumata Arowai to be sufficiently informed while not being unduly onerous to generate.

### **Working collaboratively**

You have asked to work collaboratively with Taumata Arowai and GWRC as the primary regulators of water services and associated environmental matters. That's consistent with the notification requirement in s 26 of the WSA and also the broader approach to 'significant problems or potential problems' under s 127 of the Local Government Act 2002 (**LGA02**). The statutory expectation that there will initially be a collaborative search for solutions is implicit in s 26 and express in s 127, recognising that the regulators may also have recourse to enforcement tools where necessary.

In your letter, you specifically ask GWRC to act under s 127 of the LGA02. However, GWRC is not a territorial authority and so that section does not apply to it. Rather, it is WWL's territorial authority owners that have obligations under the provision once it is triggered.

It is also relevant that all of WWL's local authority owners, including GWRC, are owners of parts of a drinking water supply and therefore are drinking water suppliers for the purposes of the WSA. They have non-transferable duties accordingly, moderated through the application of s 17 of the WSA.

These factors suggest that WWL's local authority owners should have a role in the work on options and solutions for the issues identified in your letter. I would like to discuss this with you, with a view to better understanding how WWL and its local authority owners have engaged on these issues to date and what more they might be able to usefully contribute to the collective effort.

Mana whenua also have an important role and should be included in agencies' collaborative work approach.

### **Some observations on s 25 of the WSA**

Section 25 of the WSA imposes a duty on drinking water suppliers (other than water carriers) to ensure that a sufficient quantity of drinking water is provided to each point of supply.

I note that the definition of 'sufficient quantity' in s 25 of the WSA has recently been amended to include the quantity of drinking water sufficient to support the ordinary drinking water *and sanitary* needs of consumers.<sup>10</sup> This reflects the scope of the equivalent provision of the Health Act 1956 from which s 25 is derived. The meaning of 'sufficient quantity' has consequently been slightly expanded. However, it still only applies to ordinary drinking and sanitary needs of consumers, which are a subset of all of the things water supplied by WWL is used for. WWL's duty under s 25 does not extend to ensuring ongoing supply for commercial, industrial etc uses. While I accept there is a practical reality to how the network functions that is affected by demand for all purposes, the s 25 duty prioritises the ordinary drinking water and sanitary needs of consumers.

Your letter notes an inherent tension between the duty to supply a sufficient quantity of drinking water under s 25 of the WSA and the limits imposed through plan provisions or resource consents under the RMA. You describe this tension as 'irreconcilable'.<sup>11</sup>

I disagree with that characterisation of the position. The duty in s 25 is subject to a number of exceptions. Your letter refers to one of them: i.e. the ability to restrict or interrupt the supply of drinking water because of risks to public health. However, other grounds exist. These include where restriction or interruption is necessary because of 'environmental factors affecting a source of a drinking water supply', which could reasonably be reflected in resource consent limits. This is supported by one of the statutory examples set out in s 25, which is:

*A drinking water supplier may need to restrict or interrupt supply of drinking water where a drought occurs and the source of the drinking water supply can no longer support continuous supply to consumers.*

In other words, the WSA anticipates the tension you have identified and generally enables it to be resolved in favour of environmental considerations.

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<sup>10</sup> This amendment was made by s 236(1) of the Water Services Legislation Act 2023, with effect from 31 August 2023.

<sup>11</sup> Paragraph 7 of your letter.

A planned restriction or interruption can exceed 8 hours' duration with approval from Taumata Arowai. An unplanned or emergency restriction or interruption can exceed 8 hours' duration with prompt notification to Taumata Arowai. However, there is a further requirement that is challenging in the context of widespread restrictions or interruptions that affect large numbers of consumers; the supplier must also make arrangements to ensure that a sufficient quantity of drinking water is available to affected consumers through an alternative supply (for example, by water carrier).<sup>12</sup> Where that is not feasible, a restriction or interruption that exceeds 8 hours cannot lawfully occur through s 25. Nevertheless, where the impact of a restriction or interruption can be isolated to a manageable number of consumers who can be provided with safe drinking water from an alternative supply, this offers another avenue and some flexibility for suppliers.

### **Short-term and long-term solutions**

As you acknowledge in your letter, the issues you have identified require both short-term and long-term solutions. I am encouraged by some of the activities WWL has planned to mitigate the risk of acute water shortage risks in the longer-term. However, Taumata Arowai will require that early action is taken to provide assurance that similar issues will not arise in future summer periods, notwithstanding anticipated climatic changes. That may require additional directions or other regulatory instruments. This is another matter that I would like to discuss with you and WWL's local authority owners early in the New Year.

### **Concluding comments**

Thank you again for notifying Taumata Arowai, GWRC, and other agencies of the concerns captured in your letter. As you have indicated, it is useful for them to be surfaced explicitly and for the interested agencies to have a reasonable opportunity to support WWL in the identification of options and solutions.

I trust that my response clarifies the current position and expectations of Taumata Arowai. I look forward to engaging with you further in that regard.



Steve Taylor  
Head of Regulatory

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<sup>12</sup> WSA, s 25(6).