



NOTICE OF MEETING

**Notice is hereby given of the Extraordinary Meeting
of the Invercargill City Council
to be held in the Council Chamber, First Floor,
Civic Theatre, 88 Tay Street, Invercargill on
Tuesday 17 December 2024 at 11.00 am**

Mayor W S Clark
Cr A J Arnold
Cr R I D Bond
Cr P M Boyle
Cr S J Broad
Cr T Campbell
Cr A H Crackett
Cr G M Dermody
Cr P W Kett
Cr D J Ludlow
Cr I R Pottinger
Cr L F Soper
Cr B R Stewart

MICHAEL DAY
CHIEF EXECUTIVE

Extraordinary Council - Public

17 December 2024 11:00 AM

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BLUFF WASTEWATER CONSENT – LEGISLATIVE CHANGES AND CONSENT OPTIONS

To:	Council
Meeting Date:	Tuesday 17 December 2024
From:	Erin Moogan – Group Manager – Infrastructure Services
Approved:	Michael Day - Chief Executive
Approved Date:	Thursday 12 December 2024
Open Agenda:	Yes
Public Excluded Agenda:	No

Purpose and Summary

This report provides Council with advice on the recent changes proposed by the Local Government Water Services Bill and consent application options to address the expiration of the Bluff Wastewater consent in December 2025.

Recommendations

That Council:

1. Receives the report "Bluff Wastewater Consent – Legislative Changes and Consent Options" and attached legal advice.
2. Approves:
 - Option 1** - proceed with a consent application for Status quo treatment plus new naturalistic wetland (previously referred to as Option 1F) under the existing Resource Management Act framework: or
 - Option 2** – proceed with a consent application for a new short-term consent to continue to operate the existing plant under the current discharge consent conditions for a period of four years: or
 - Option 3** - do not proceed with a consenting process at this time.
3. Considers if the matter is significant and if so request staff initiate a public consultation process.

Background

The current Bluff Wastewater discharge consent expires December 2025.

The Resource Management Act 1991 (RMA) currently requires Council to identify the Best Practicable Option (BPO) as defined under the Resource Management Act for discharge of treated wastewater from the Bluff Wastewater Treatment Plant.

In 2023 a Technical Working Group was formed to undertake the options assessment for the project and make recommendations to Council. At the Infrastructure and Projects Committee meeting on 8 October 2024 the Committee endorsed the preferred option of the Working Group and resolved to recommend to Council that it proceed with Option 1F Status quo treatment plus new naturalistic wetland as the Best Practicable Option. This option has been endorsed by Awarua Rūnaka and Te Ao Mārama and was considered to best balance of affordability, cultural and deliverability requirements while maintaining public health and improving biodiversity outcomes. Option 1F costs are estimated to be \$6,490,000 with an annual maintenance increase of \$210,000 per annum.

On 25 November 2024, the Mayor attended a briefing by the Chief Executive of The Water Services Authority - Taumata Arowai where it was signaled that new national wastewater discharge standards being developed would have a significant impact on future wastewater consents. Council staff had been aware that National standards were being developed. It was expected that these standards would supplement the existing RMA process. It was now being indicated that they may take precedence over the RMA framework. Advice was provided by Taumata Arowai that further clarity would be provided in December.

Council proceeded to leave the recommendation of the Infrastructure Committee on the table pending further developments in this space.

Issues and Options

Analysis

Since its enactment in 2021, section 138 of the Water Services Act has contained the power for Taumata Arowai to make regulations prescribing Environmental Performance Standards (EPS) for wastewater services. On 10 December 2024 the Local Government Water Services Bill (LGWS Bill) was released. The Bill introduces new Taumata Arowai powers to introduce technical performance standards, treatment processes, design requirements and operating requirements for wastewater infrastructure (Infrastructure Design Solutions).

The LGWS Bill affords these environmental standards and technical standards a significant role, primarily by amending the RMA so they prevail over any RMA document (national or regional policy statements, national environmental standards and regional or district plans). In addition, it also mandates what conditions can be applied when an approved Infrastructure Design Solution is used.

The detail of the new standards will not be released until March 2025. It is proposed that they would become legislation in August 2025.

The LGWS Bill further proposes that any activity that meets an EPS for wastewater must be granted consent for a term of 35 years, which is the maximum term available under the RMA for a discharge permit.

The LGWS Bill also proposes to extend the term of expiring wastewater resource consents by two years. Importantly, this would only apply to consents that expire during the two years following the LGWS coming into force. It would not apply to consents that expire before the LGWS Bill comes into force.

It is anticipated that under new wastewater discharge standards, the discharge from the Bluff Wastewater Treatment Plant (WWTP) may have an easier consenting pathway. The incoming government has indicated strongly that the new legislation could halve wastewater consent costs for smaller treatment plants. However, there are currently Council's in the South Island who have in excess of \$90 million in their Long-term Plans for treatment plant upgrades that service communities smaller than Bluff. The Bluff consent may not see the same level of reduction in a \$6.49 million project.

We also suspect that the size of the Bluff population served is above the currently-contemplated threshold. Indications are this may apply to treatment plants servicing populations of 1000 people or less. We also do not know if the fact that the Bluff WWTP's discharge is into a Mataitai Reserve will count against it in the same way that now counts against it under the Fast Track Approvals Bill. While this is not expected, there is a risk that the new standards could make the path more difficult for the Bluff WWTP and significantly increase the capital and operational investment required.

It is likely that the LGWS Bill will be passed in 2025, and the clause proposing a two-year extension to expiring consents survives the legislative process, giving the Council another two years to decide how to proceed with its new consent application. However, because neither the timing nor the content of the LGWS Act are certain, our legal advice is that lodgment of an application to maintain the Council's right to operate by 30 June 2025 would be prudent.

Council can avoid the risk of its consent expiring by lodging an application in time to secure the protection of s 124 of the RMA. These provisions allow the consent holder to continue to operate under the previous consent until such time as the new consent application is either granted or declined.

Council can take advantage of s124 provisions of the RMA if an application for a new consent is lodged at least 6 months prior to the consent expiring. The new application must be assessed as complete by the Regional Council ahead of 30 June 2025 and any requests for information also completed by that date. If the application is assessed as incomplete then it is rejected in entirety and must be resubmitted. Advice from Harrison Grierson who are providing the planning advice to Council is that Council can wait until 13 May 2025 to submit an application and still have a reasonable likelihood of the application being accepted ahead of the 30 June cut off.

It should be noted that Council is facing significant time pressure to meet the 13 May date required for submitting the consent. This is largely due to the time required to prepare Environmental Impact Statement and Cultural Impact statements post a Council decision on its preferred consenting pathway.

While Council cannot control the uncertainty in this space it does have options for how it responds. Each option will have positives and negatives and Council will need to weigh these up to determine the best course of action. It is important to note that should Council lodge a consent application that it later becomes aware is not providing the best outcomes it can elect to change its approach and lodge a new consent application to move forward with.

Significance

The project is of importance to the Council and of community interest. \$7.2 million is allocated to the Bluff WWTP project within the Long-term Plan and the importance of addressing changing regulatory requirements has been discussed within the plan.

In-depth early engagement on the options recommended by the Working Group has taken place as part of the project. As a result the views of Iwi partners and the Bluff Community Board, as well as the wider group of stakeholders on the possible options identified by the Working Group are known.

A further assessment of significance is provided under the options below.

Options

Option 1

Approve the decision of the October Infrastructure and Projects Committee and proceed with a consent application for Option 1F Status quo treatment plus new naturalistic wetland under the existing RMA framework.

This option is consistent with Council policy and strategy. The project is included within the Long-term Plan and has been assessed as affordable for the community as a whole, rather than just Bluff and the cost was included and communicated to the community as part of the Long-term Plan.

As a result, this option is assessed as not significant in relation to the Council's Significance and Engagement Policy and consultation is not recommended.

Advantages	Disadvantages
Option is supported by the Technical Working Group, Te Ao Marama and Awarua Runanga providing a low risk, straight forward consenting process.	The government has signaled a desire to reduce costs for Councils through the new RMA framework. This option may prove to be a higher cost option than those available under the new standards and legislation leading to doubling up of application process costs if Council decides to pursue a different option in the second part of 2025.
Allows Council to lodge an application under the existing RMA framework providing a high level of process and cost certainty	While the new discharge standards are set to become legislation in August 2025 the 2 new pieces of RMA legislation won't be in force until 2026 meaning Council will still have uncertainty on the impact of any changes in the new legislation.
Provides flexibility to lodge a new application under the new legislation in the second part of 2025 if Council decides the new standards and legislation offer a better option for Council.	
Upgrades have been programmed into the current capital programme in the Long-term Plan and can be accommodated without	

delaying other critical Long-term Plan projects.	
Feasibility is nearing completion with no red flags on ability to deliver the required upgrades.	
Eliminates the risk of Council operating an unconsented treatment plant.	

Option 2

Apply for a new short-term consent to continue to operate the existing plant under the same discharge consent conditions for a period of four years so there is clarity around the requirements of the new discharge standards and new RMA legislation ahead of Council making investment in this space.

While this option is not consistent with what Council has communicated through its Long-term Plan the recent legislative change indicated and uncertainty associated with that change makes a short-term consent as a placeholder a reasonable pathway for Council.

As a result, this option is assessed as not significant in relation to the Council's Significance and Engagement Policy and consultation is not recommended.

Advantages	Disadvantages
If the new standards require little to no improvement to discharge quality from the Bluff WWTP this option could significantly reduce the capital and operational investment required to be made under the current RMA framework.	While we anticipate the new standards providing a more straightforward pathway to getting consent, the details may not deliver that result. New standards could increase the capital and operational investment required.
Council will have full understanding of the requirements of the new standards and new RMA legislation ahead of making a decision on future investment in the Bluff WWTP.	There would be no opportunity to revert to the previous process.
Is a reasonably simple consent application to prepare.	We have been advised verbally by Te Ao Mārama that this is not an option that is supported.
Eliminates the risk of Council operating an unconsented treatment plant.	A significant upgrade in four years' time may impact other Long-term Plan projects due to financial and resourcing constraints.

Option 3

Do not proceed with a consenting process at this time

This option is assessed as inconsistent with Council's risk policy and is likely to trigger Council's significance provisions. Consultation is recommended for this option.

Advantages	Disadvantages
No investment would be made until the impact of the new standards is known.	Should the provision of the two-year extension proposed by the LGWS Bill NOT come into law before December 2025 council is likely to be in a position where it is discharging unlawfully and open to legal action and cost.
Should the provision of the two year extension proposed by the LGWS Bill come into law before December 2025 Council will be able to continue consented operation of the plant.	We have been advised verbally by Te Au Mariama that this is not an option that is supported.
No cost associated with a consent application process.	Under section 80 of the Local Government Act if a decision of a local authority is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, any policy adopted by the local authority or any plan required by this Act or any other enactment, the local authority must, when making the decision, clearly identify— (a) the inconsistency; and (b) the reasons for the inconsistency; and (c) any intention of the local authority to amend the policy or plan to accommodate the decision.

Community Views

Key community groups have been engaged through the process to date.

These have been achieved through:

- Partnership with Te Rangana o Ngai Taha - Te Rangana o Aarau, Te Rangana o Ngai Taha - Waipio Rūnaka through Ngai Tahu - Te Ao Mārama Inc. (TAMI). TAMI are integral member of the Working Group.

- Engagement with Bluff Community Board, through regular updates at board meetings, role assigned in the Governance Group and board workshop held 19 September 2024.
- Engagement with Southland District Health Board – Public Health South engagement as a working Group Member.
- Engagement with the following stakeholders providing information updates to.
 - Southland District Council
 - Gore District Council
 - Environment Southland
 - Department of Conservation
 - Royal Forest and Bird
 - Fish and Game
 - AquaSouthern Inshore Fisheries Management Company Ltd
 - Ministry of Primary Industries (MPI)
 - Great South (Southland Regional Development Agency)
 - Bluff and Invercargill Communities – LTP consultation
 - Ocean Beach (Bluff limited)
 - Cando Fishing
 - Ngai Tahu - Seafood & Aqua Culture
 - Bluff Proteins Limited
 - Sanford
 - SouthPort
 - Harbour Fish
 - SouthFish
 - Riverton Fish Company
 - "Good as gold | New Zealand Geographic (nzgeo.com)
 - Taumata Arowai
 - Manaki Whitebait
 - Federated Farmers - Southland
 - TRONT - Te Rununga o Ngai Tahu, Ngai Tahu Whanui
 - BCO 5
 - Aquaculture New Zealand
 - New Zealand Salmon Farmers Association (NZSFA)
 - Barnes Oysters Ltd

Stakeholders were identified and first contacted in January 2024 to provide a summary of the project objectives, approach and timeframes. In August 2024, identified stakeholders were provided a progress update and a summary of the short listed options being considered by the Working Group. In addition, the community was engaged, via social media, press releases and a news update on the Councils website. An invitation to provide feedback on the shortlisted options was offered but no direct feedback was received.

Implications and Risks

Strategic Consistency

Option 1 and Option 2 will continue to support Councils Strategic Outcomes by continuing to provide compliant wastewater treatment and disposal of treated wastewater for the Bluff Community.

Financial Implications

Option 1 - costs have been reviewed by the finance team and confirmed to be within the Long-term Plan budget allocation. The level of service to the Bluff community will remain within acceptable levels to service the community, and available capacity to support future economic development.

Option 2 - short term costs of an interim consent costs have been reviewed by the finance team and confirmed to be within the Long-term Plan budget allocation. The long term costs of this option post the interim consent are unknown.

Option 3 - requires no change to current capital or operating cost of the plant however there is a high potential of unbudgeted legal fees associated with operating an unconsented wastewater discharge.

Legal Implications

Options 1 and 2 are assessed as being compliant with the relevant policies in the New Zealand Coastal Policy Statement, Southland Regional Policy Statement and Southland Regional Coastal Plan in order to achieve a new consent. Option 3 has the potential for Council to be operating an unconsented discharge and open to legal action.

Climate Change

The effects of climate change have been considered in the assessment, manifesting as increased storm events with increasing rainfall. These predictions have been used in the "growth" scenario of the flows and loads report for options 1 and 2.

A qualitative assessment for Greenhouse gas emissions was completed with any increase not significantly influential to additional emissions.

Risk

Risk Description	Mitigation
Changing legislative framework	Legal advice received on the impact of known changes
Confirming assessment assumptions – Ecology, hydrology and soil investigations	Complete investigations
Cost Estimate within budget following refinement of concept design	Refine design following further investigations, complete cost estimate.
Insufficient engagement	On-going engagement to all stakeholders

Next Steps

1. Following determination by Council on the preferred option, finalise concept design (if applicable) and consent preparation with final costs and proposed consent conditions to be provided to Council prior to consent lodgement.
2. Appropriate monitoring of the treated discharge into the Marine environment to continue.
3. If Council deems the option requires consultation then consultation materials will be finalised and brought back for adoption ahead of consultation starting in early 2025.

Attachments

1. Legal advice memo – A5681998

Legally privileged and confidential

Memo

To: Invercargill City Council

From: Janette Campbell (Barrister), Brandon Watts (Meredith Connell)

Date: 12 December 2024

Subject: **Bluff Wastewater Treatment Plant – Environmental Performance Standards for wastewater services and other changes under the Local Government Water Services Bill**

1 Introduction

- 1.1 On 13 October 2024 Mayor Clark issued a memorandum raising several issues relating to the choice between options 1A, 1F and 1G¹ and the consenting pathways available under the RMA and proposed Fast-Track Approvals legislation (**FTA**). In our memorandum of 23 October 2024 we provided advice regarding any risks that might either arise or be mitigated by pursuing approval under the FTA.
- 1.2 This advice considers the potential effect of “Environmental Performance Standards” for wastewater services and other changes proposed in the Local Government Water Services Bill (**LGWS Bill**), released on 10 December 2024.
- 1.3 As with our previous advice, we note the very real possibility that the timing and content of the anticipated legislative and regulatory steps may change in ways that do not meet current expectations.

2 Executive summary

- 2.1 We understand that Taumata Arowai intends to release a discussion document in February/March 2025 which will provide more details about (and potentially draft versions of) the proposed new environmental performance standards (**EPS**) for wastewater discharges and/or infrastructure design solutions (**IDS**) for wastewater infrastructure. At this stage, the Government intends that the LGWS Bill will be passed by mid 2025, and there is the potential for the new wastewater EPS to be made by Order-in-Council in a similar timeframe.
- 2.2 It is anticipated that under new wastewater discharge standards, the discharge from the Bluff Wastewater Treatment Plant would have an easier consenting pathway. However there is also a risk that may not be the case, as with the Fast-Track Approvals legislation where

¹ Option 1A is the status quo; Option 1F includes a wetland phase; Option 1G discharges to a rock gully.



significant changes were recommended by the Select Committee, and by the Government, after the release of the Bill.

- 2.3 If the clause in the LGWS Bill that proposes a two year extension to expiring consents survives the legislative process, this will give the Council another two years to decide how to proceed with its new consent application. However, because neither the timing nor the content of the LGWS Act are certain, lodgement of an application to maintain the Council's right to operate by 30 June 2025 would be prudent.
- 2.4 Given the uncertainties about the content and more particularly the timing of the new legislation and associated regulations, they cannot safely be relied on to ensure lawful operation of the Bluff plant beyond December 2025.

3 Environmental Performance Standards

- 3.1 An EPS can set standards relating to the discharges to air, water or land, which are the key activities regulated by the RMA. An EPS can also set standards relating to biosolids and other by-products from wastewater, energy use, and waste introduced to a network by a third party (for example trade wastes).²

Process

- 3.2 Since its enactment in 2021, section 138 of the Water Services Act has contained the power for Taumata Arowai to make regulations prescribing Environmental Performance Standards (**EPS**) for wastewater services. However it had not been used. The LGWS Bill proposes significant changes that amplify the significance of EPS.
- 3.3 The process for formulating an EPS for wastewater services remains the same: Taumata Arowai must consult with wastewater network operators, regional councils, and "any other person it considers appropriate" before issuing an EPS by Order in Council.³

Status in relation to RMA

- 3.4 However the LGWS Bill affords an EPS a much greater role, primarily by amending the Resource Management Act 1991 (**RMA**) so that an EPS will prevail over any RMA document (national or regional policy statements, national environmental standards and regional or district plans).⁴ Any rule in an existing RMA plan that conflicts with or duplicates an EPS provision must be amended as soon as practicable, without going through any public process.⁵
- 3.5 In a similar vein, the LGWS Bill proposes that the key sections of the RMA governing decisions on resource consent applications will be amended.⁶ Of particular note, s 104 will be amended so that a resource consent cannot be granted "contrary to" a EPS and must include conditions that "are no more or less restrictive than is necessary to give effect to" the EPS.⁷

Term

² LGWS Bill, cl 328.

³ LGWS Bill, cl 328.

⁴ LGWS Bill, cl 269.

⁵ LGWS Bill, cl 269.

⁶ LGWS Bill, cl 273-6.

⁷ LGWS Bill, cl 273.

- 3.6 The LGWS Bill proposes that any activity that meets an EPS for wastewater must be granted consent for a term of 35 years, which is the maximum term available under the RMA for a discharge permit.⁸

4 Infrastructure Design Solutions

- 4.1 The LGWS Bill proposes to give Taumata Arowai the power to introduce IDS. An IDS will be able to set technical performance standards, treatment processes, design requirements and operating requirements for wastewater infrastructure.⁹ If wastewater infrastructure complies with an IDS, it is deemed to meet the relevant EPS.¹⁰

Process

- 4.2 The process for issuing an IDS is almost identical to that for an EPS, except that Taumata Arowai must also consult with mana whenua before issuing an IDS by Order in Council.¹¹

Status in relation to RMA

- 4.3 Like an EPS, an IDS prevails over all RMA documents,¹² and dictates the outcome of resource consent applications.¹³ In addition (and unlike an EPS) an IDS also mandates the conditions that can be applied to a designation when an IDS is relied on.¹⁴

Term

- 4.4 Mirroring the provisions in relation an EPS, any resource consents for a wastewater treatment plant that meets the requirements of an IDS must be granted for the maximum 35 year term.¹⁵

5 Expiring resource consents

- 5.1 The Bluff WWTP's resource consent to discharge treated wastewater expires on 31 December 2025. Under the RMA as it currently stands, the only ways to lawfully operate beyond that date are:

- (a) To secure a replacement consent before expiry; or
- (b) Under s 124 of the RMA:
 - (i) to apply for a replacement consent at least six months beforehand (before 30 June 2025); or
 - (ii) with the regional council's approval, to apply for a replacement consent at least three months beforehand (before the end of September 2025).

- 5.2 The LGWS Bill proposes to amend s 124 so that an EPS can specify a period of time for which a wastewater consent holder can continue to operate under an expired consent. It is not

⁸ LGWS Bill, cl 277.

⁹ LGWS Bill, cl 331.

¹⁰ LGWS Bill, cl 331.

¹¹ LGWS Bill, cl 331.

¹² LGWS Bill, cl 269.

¹³ LGWS Bill, cl 273-6.

¹⁴ LGWS Bill, cl 283 and 285; Cf cl 268 for the relationship between an EPS and a designation.

¹⁵ LGWS Bill, cl 277.

clear whether an EPS could revive a consent that had expired prior to the LGWS Act coming into force, although we note that such an approach would contravene the general presumption that laws cannot act retrospectively.¹⁶

- 5.3 More significantly for the Bluff WWTP, the LGWS Bill proposes to extend the term of expiring wastewater resource consents by two years. Importantly, this would only apply to consents that expire during the two years following the LGWS coming into force. It would not apply to consents that expire before the LGWS Bill comes into force.¹⁷

6 Strategic considerations

- 6.1 While the LGWS Bill appears very promising for the Bluff WWTP, several significant caveats need to be kept in mind:
- (a) It is not certain that the LGWS will not change before it is enacted. It still has to pass through the Select Committee phase and subsequent readings in the House. The changes and delays to the Fast-Track Bill are illustrative.
 - (b) While the government's expressed intention is to enact the LGWS Bill by mid-2025, it is not certain that it will stay on schedule. If it were delayed until 2026, the two year extension for expiring consents would not apply to the Bluff WWTP consent. The only way to avert this risk of expiry is by lodging an application to renew the consent by 30 June 2025 (or by September 2025 with the regional council's agreement).
 - (c) The contents of any EPS and/or IDS are yet to be seen. While we anticipate them providing a more straightforward pathway to getting consent, the details may not deliver that result. For example, we understand that some small municipal discharges may become permitted activities, but it remains to be seen where the threshold for this is set. We suspect, but do not know at this stage until further details are publicly released, that the size of the Bluff population served is above the currently-contemplated threshold. Similarly, we do not know if the fact that the Bluff WWTP's discharge is into a Mātaitai Reserve will count against it under the EPS in the same way that now counts against it under the Fast Track Approvals Bill. While contrary to our expectations, there is a risk that the EPS and IDS could make the path more difficult for the Bluff WWTP.
 - (d) The timing of any EPS and/or IDS is uncertain. They cannot take effect until after the LGWS Bill is enacted, in any event, so mid-late 2025 at the earliest. The date for applying to renew the existing consent under s 124 will probably be past before the Council knows what the EPS and/or IDS will contain.
- 6.2 The Council can avoid the risk of its consent expiring, leaving it discharging unlawfully, by lodging an application in time to secure the protection of s 124. Doing so could also protect the Council against any adverse changes to the legislation or regulations.
- 6.3 There is a further decision to be made about whether that application is for a long term solution or a short term stop-gap pending the passage of the LGWS Bill and the development of EPS and IDS. However that is not the subject of this advice.

¹⁶ LGWS Bill, cl 278.

¹⁷ LGWS Bill, cl 280.

7 Conclusion

- 7.1 We understand that Taumata Arowai intends to release a discussion document in February/March 2025 which will provide more details about (and potentially draft versions of) the proposed new environmental performance standards (**EPS**) for wastewater discharges and/or infrastructure design solutions (**IDS**) for wastewater infrastructure. At this stage, the Government intends that the LGWS Bill will be passed by mid 2025, and there is the potential for the new wastewater EPS to be made by Order-in-Council in a similar timeframe.
- 7.2 It is anticipated that under new wastewater discharge standards, the discharge from the Bluff Wastewater Treatment Plant would have an easier consenting pathway. However there is also a risk that may not be the case, as with the Fast-Track Approvals legislation where significant changes were recommended by the Select Committee, and by the Government, after the release of the Bill.
- 7.3 If the clause in the LGWS Bill that proposes a two year extension to expiring consents survives the legislative process, this will give the Council another two years to decide how to proceed with its new consent application. However, because neither the timing nor the content of the LGWS Act are certain, lodgement of an application to maintain the Council's right to operate by 30 June 2025 would be prudent.
- 7.4 Given the uncertainties about the content and more particularly the timing of the new legislation and associated regulations, they cannot safely be relied on to ensure lawful operation of the Bluff plant beyond December 2025.