

20 July 2022

Committee Secretariat
Finance and Expenditure Select Committee
fe@parliament.govt.nz

Tēnā koe

Tasman District Council's Submission on the Water Services Entities Bill

Thank you for the opportunity to submit on the Water Services Entities Bill (the Bill) as part of the Three Waters reform (the Reform).

Background

Tasman District Council (the Council) is a unitary council near the top of the South Island. The district's estimated population of 57,900 residents is growing at 1.8% per annum in a mix of rural and township settlements. The Council operates:

- fifteen (15) water supplies, including 11 urban and four rural water supplies;
- eight wastewater networks, including eight treatment plants; and
- fifteen (15) urban drainage areas including stormwater network infrastructure.

These networks are dispersed throughout our large district, including within several settlements along our coastline that are vulnerable to sea-level rise and coastal inundation.

Submission

We acknowledge the submissions made by Local Government New Zealand and Water New Zealand on the Bill. We largely support the submission made by Taituarā — Local Government Professionals Aotearoa.

Tasman District Council's submission on the Bill is provided in Appendix 1. We wish to speak to our submission during the select committee process.

The Council's contacts for this submission are:

- Mayor Tim King – tim.king@tasman.govt.nz
- Richard Kirby (Group Manager – Community Infrastructure) Richard.Kirby@tasman.govt.nz

Thank you again for the opportunity to submit on this important Bill. We strongly encourage the Government to continue to engage with local government, iwi and the wider community throughout this process.

Na māua noa, nā



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Te Koromatua o te tai o Aorere



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Appendix 1: Tasman District Council's submission on the Water Services Entities Bill

We accept the Government's intended outcomes of the Reform including:

- safe, reliable drinking water;
- better environmental performance of wastewater and stormwater services;
- efficient, sustainable, resilient and accountable multi-regional three waters services and management; and
- making it affordable for future generations.

However, we have concerns about many provisions set out in the Bill. Our key concerns relate to the following matters:

1. Government process, engagement and communication
2. The case for change
3. Asset ownership and protection from privatisation
4. Shareholding arrangements
5. Balance sheet separation - funding and financing infrastructure
6. Governance structure, regional influence and accountability matters
7. Planning and engagement
8. Charging and funding
9. Entity boundaries
10. Rural water supplies
11. Role of central government policy statements
12. Feedback from the community

We also seek clarification on entity boundaries.

1. Government process, engagement and communication

The Government's Three Waters Reform (the Reform) is the most significant and complex change local government has faced in three decades. The proposal to change the way three waters services are delivered, from a local to a more centralised model, raises concerns and many questions from our community.

Many residents in our community have expressed opposition to the Reform programme. The major concerns from the community include:

- **lack of community voice in the proposed entities and governance structure;**
- **asset ownership and the appropriation of Council assets; and**
- **non-elected members being appointed to the governance positions in the new Water Service Entities (WSE).**

We are disappointed that the Government has failed to engage or front up to the community on its Three Waters Reform Programme at a local level. We acknowledge that there has been some engagement between the Government and local authorities about the proposed Reform, this has been limited and inadequate given the scale and far-reaching implications of the proposed changes.

The Council made several requests asking Government representatives to directly engage with our community during our public feedback period, however the opportunity was not taken. We are aware that the Select Committee is considering a road show to hear the voice of the regions and would welcome the opportunity to host the Select Committee at Tasman District Council for

submission hearings. **We request that the Select Committee hears submissions from the Top of the South/Te Taihu locally.**

The Council is also disappointed about the lack of an effective communication campaign to help the public better understand the Reform and why it is needed. The much-criticised campaign that was rolled out in early 2021 has fuelled the divisive conversation about the Reform. Furthermore, the Department of Internal Affairs website that hosts information about the Reform is not easy to navigate and the sheer volume of information and reports is difficult to digest.

The success of the Reform transition and implementation will be dependent on a smooth and well-managed change. We are concerned about the lack of targeted communication and engagement with the public and request that the Government work closely with local authorities to help manage the public through future change.

2. The case for change

We accept there is a case for change for three waters service delivery arrangements and acknowledge current management and funding arrangements are not likely to be adequate to meet future challenges, including:

- growth and urban development;
- increasingly stringent health and environmental regulations; and
- adapting to climate change and increasing resilience to natural disasters.

Investment in critical three waters infrastructure is needed to future-proof Tasman communities. Already the investment required to maintain, improve and extend our three waters infrastructure is significant and the status quo is not an option.

However, **Council's acceptance of a case for change is not an endorsement of all the proposals in the Bill.**

3. Asset ownership and protection from privatisation

We support the retention of public ownership of three waters assets and the proposed protection against privatisation.

We acknowledge the Governments 'public ownership' bottom line for progressing Reform.

We support the protections against privatisation that are included in the Bill, including the changes made as a result of the recommendations of the *Governance, Representation and Accountability Working Group* to entrench community ownership by including the following requirements to proceed with privatisation:

- *seventy-five (75) per cent support in the Regional Representative Group;*
- *unanimous consent of each of the shareholding local authorities; and*
- *seventy-five (75) supermajority of electors supporting the proposal in a referendum of the WSE area.*

We appreciate these provisions are designed to protect against the risk of privatisation and set a very high bar for privatisation, making it virtually impossible for a WSE to divest assets from public ownership.

Despite these high thresholds, we are concerned these requirements can be amended or removed by a future government with a simple Parliamentary majority.

We request the Select Committee recommend to Parliament that the Bill provisions related to privatisation be further entrenched by requiring a 75% majority in Parliament to make any changes regarding privatisation in the future.

It is also important to our community to safeguard public ownership and have robust mechanisms in place, making it harder for future governments to have the ability to amend or remove the divestment thresholds.

4. Shareholding arrangements

We accept the shareholding arrangements proposed in the Bill but question the value of the arrangements.

The proposed shareholding model outlined in clause 16 of the Bill meets the Government's public ownership bottom line, with shares allocated to councils reflective of the size of their communities (i.e. one share per 50,000 people).

The proposed non-financial shareholding model does not provide any of the conventional benefits that typical shareholding arrangements convey (such as a share of revenues or assets or voting rights in shareholder meetings that influence decisions).

We consider the only possible benefits of the shareholding to be (i) a right of veto in the instance that privatisation is proposed, and (ii) in determining the make-up of the Regional Representation Group. Consequently, we will be shareholders in name only.

We request the Select Committee recommends to Parliament consideration of allocating shares in a way that better reflects the contributory share of the infrastructure within the Tasman District.

5. Balance sheet separation – funding and financing infrastructure

We accept the balance sheet separation proposed in the Bill.

We acknowledge that one of the Government's bottom lines for the Reform is to have balance sheet separation. Balance sheet separation in the Reform is a means of limiting local authorities' influence over water assets.

Balance sheet separation should provide the proposed WSEs with stronger credit ratings. This, in turn, should enable WSEs to borrow at the higher levels required to fund the infrastructure improvements and at more favourable interest rates.

Tasman District Council, like many others, faces challenges to its funding and financing arrangements with limits on its borrowing and debt servicing capability. While the Council has not exceeded its financing covenants, there has been a considerable reduction in the borrowing headroom in recent years as a result of the investment in infrastructure, particularly relating to three waters. Rates and debt levels remain higher than for many other councils, leading to ongoing rates and affordability issues within the District.

As the Council will have little or no ability to influence the decisions of the WSE's, it is important that the Council's borrowing and debt servicing capacity is not affected by any WSE decisions. The proposed balance sheet separation provides this independence for the Council to make future funding and financing decisions.

6. Governance structure, regional influence and accountability matters

We acknowledge the work to date undertaken by the *Representation, Governance and Accountability Working Group* and note the Government has taken on board some of their recommendations. The Bill now has provisions for each WSE to have a two-tier governance structure consisting of:

- i. a Regional Representative Group (RRG) - made up of local authority and mana whenua representatives; and
- ii. a WSE Board made up of competency-based professionals.

In general, we consider the proposed governance structure to be complex and top-heavy. We are concerned that the structure will create multiple levels of bureaucracy, result in increased costs, and erode any potential efficiencies created by centralisation.

We request that RRG be broadly representative of the different mix of metropolitan, provincial, and rural communities they represent.

RRG must reflect the range of communities within the WSE boundaries. The three waters challenges, approaches and solutions are different for metropolitan areas, small towns and rural areas. There is a risk that the RRG will become dominated by representatives from the larger, more metropolitan authorities in the WSE area and that the perspectives of smaller and more rural areas will be overlooked. For this reason, we advocate for the composition of RRG to reflect the range of authorities and needs in their area.

We request that local authority representatives on the RRG only be drawn from elected local government officials.

To maintain the important connection to local democracy, the RRG should be made up of elected local government representatives only. We do not consider the appointment of unelected local government officials to these groups to be appropriate. The technical expertise in the provision and operation of three waters infrastructure and services will be provided through the WSE boards in the proposed model.

We request that the threshold for RRG decisions be lowered, as the 75% supermajority threshold is unreasonably high.

We understand that the roles of the RRG are to:

- appoint WSE board members and where necessary remove board members;
- participate in the process of setting the entity's strategic direction and performance expectations;
- review the performance of the entity; and
- approve the appointment and remuneration policy prepared by its board appointment committee.

Given the many, wide-ranging decisions the RRG will need to make, requiring a 75% supermajority may pose risks to the effective functioning of the WSE. It is conceivable that the RRG may be incapable of reaching a decision in circumstances where a 75% supermajority cannot be obtained for any of the available options. We, therefore, recommend that the Bill be amended to provide for decision-making to be through a simple majority where consensus cannot be achieved.

We recommend that Regional Advisory Panels (RAP) should have a direct relationship with the WSEs.

The role of the RAP is to provide advice on the RRG performance or exercise of its duties, functions, or powers. The purpose of the RAP is to provide a mechanism for local representatives to influence the operation of the WSEs via the RRG.

We consider that the RAP could better achieve this purpose by having a direct relationship with both the RRG and the WSE. While communication on strategic issues via the RRG is important, those representing local community interests also need to have a direct relationship with the WSE to provide community input and where necessary help resolve day-to-day operational issues.

We recommend that the purpose of the RAP should be to represent their communities only. They should not be fettered with an obligation to consider the interests of all communities in a WSE's service area.

The principal benefit of a RAP is advocacy for the needs and issues of the communities within a region represented by the RAP in the WSE areas. The RAP members should be able to strongly advocate to the RRG (and ideally directly to the WSE) about the needs of the area they represent. Where a local authority does not have a representative on the RRG, the RAP provides the main mechanism for local needs to be heard. Advocacy for the needs of the local area should not be conditioned by the need to balance this against the interests of the other communities in the WSE area.

We recommend the inclusion of a requirement for at least one RAP to be formed as part of the WSEs' first constitutions.

Section 95(1) of the Bill enables a RRG to propose to amend the WSE's constitution or adopt a new constitution for the entity. Given this enabling power, the first WSE constitutions should include a requirement for the WSE to create at least one RAP within the WSE services area. Without this amendment, a situation could arise where a WSE does not create a RAP, meaning that the mechanism to amend the WSE constitution could not be utilised.

We recommend that the Minister consults with all local authorities within a WSE's boundary before constitutions are made regarding the number and location of RAP.

We understand that the Minister of Local Government will develop the initial constitutions of WSE. The development of these constitutions is an important step and could have ongoing implications for the effective operation of these bodies. The Minister should consult with all the local authorities with each WSE boundary as part of the constitution development process. This will enable the creation of more robust and well-considered constitutions that will serve the WSEs well into the future.

7. Planning and engagement

We request the Select Committee recommend to Parliament that the time horizon for the Statement of Strategic and Performance Expectations be extended to 10 years and reviewed at least every three years.

The Bill provides for the Statement of Strategic and Performance Expectations to be reviewed annually. We consider that requiring annual reviews of these documents is too frequent and implies they are short-term in nature, rather than strategic. Therefore, we recommend that the time horizon for these documents should be 10 years, with a review at least every three years, similar to the time horizons for local authorities' Long-Term Plans.

8. Charging and funding

We request the Select Committee recommend to Parliament that WSE charges must be assessed and invoiced without any involvement from local authorities.

We are concerned about the change management process for charging three waters service delivery from the local authorities to the new WSE, particularly the risk that customers may be confused during the transition period.

Customers need to be well informed in advance of the changeover. Clear and concise communication about new charging and funding arrangements will be required to ensure customers understand that the process is independent from local authority rating charges.

We also request the Select Committee recommend to Parliament the requirement for harmonisation of fees and charges from the establishment of the WSEs (1 July 2024).

We acknowledge the Government's rationale that the Reform must ensure that consumers and communities receive efficient and affordable three waters services now and in the future.

We are concerned about the lack of detail regarding how funding and charging will be made. We are also concerned that there is no direct reference to 'affordability' in the Bill. We acknowledge this is likely to be addressed in the economic regulation and consumer protection legislation expected later in the year. It is challenging to provide a well-considered submission without seeing the Economic and Consumer Protection Bill.

Funding and charging arrangements need to be transparent and equitable. This is critical to the Reform being successful and is a major concern of our communities, in particular our rural communities. We would like to see consistent and affordable funding and charging arrangements from day one.

9. Rural water supplies

We acknowledge the recommendations from the Rural Supplies Technical Working Group and support the Government's decision to include Council-owned and operated rural water supplies to be transferred to WSE.

In Tasman District, we have three Rural Water Supplies (Dovedale, Eighty Eight Valley and Redwood Valley) that are managed by the Council and another rural water supply that is owned by the Council but managed by the community (Hamama). We recognise that rural community needs and concerns are unique and varied.

The cost to deliver water services in rural areas is becoming increasingly unaffordable. This is due to the expectation that these rural supplies meet the drinking water standards. The transfer of these rural water supplies will help ensure they are financially viable in the medium to long term.

There have been growing concerns about how our rural water supplies will be viable in the future, as some schemes have built up considerable deficits in their accounts that need to be repaid by increasing future charges. Currently, the pricing of the Council-owned rural water services is on a cost recovery basis and each rural supply account is ringfenced, meaning only those connected to the network pay for capital upgrades.

We have noticed increasing charges result in users leaving the scheme. Additional financial pressure is placed on remaining scheme users and the future of a scheme is jeopardised.

Please refer to the recommendation in section 8 above about the requirement for harmonisation of fees and charges from when WSEs are first established (i.e. from 1 July 2024). There will need to

be aggregation to allow cross-subsidisation of the current schemes if access to water and pricing are to be kept affordable for rural communities.

10. Entity boundaries

We request that the Government include all Top of the South/Te Taihū three water assets in the Southern Water Services Entity, not the Eastern Central Water Services Entity, on the basis that:

- **it provides a better geographic and identity fit;**
- **Tasman District has more in common with South Island local authorities and areas and transport supply chains; and**
- **the boundaries reflect and align with the Governments recent health reforms.**

Schedule 2 (Part 3) of the Bill states the Tasman District Council service area is part of the Eastern-Central Water Services Entities. We request that Tasman District Council (along with Nelson City Council and Marlborough District Council) moves into the Southern Water Services Entity to better reflect and align with the recently adopted health reforms where the South Island is a single entity.

Our request would also remove the complexities associated with our wastewater network that straddles the boundary between the Governments proposed entities, in particular the settlement of St Arnaud.

Being in the Southern Water Services Entity would enable more streamlined relationships with other entities and more straightforward operational arrangements for our community.

Te Waipounamu / the South Island has a distinct cultural identity from Te Ika a Māui / the North Island. It is inappropriate to break off the prow of the waka (i.e. Te Taihū o te Waka a Maui).

You will see from our supplementary submission that the three councils and ngā iwi o Te Taihū have a unified view that Te Taihū should be part of the Southern Water Services Entity.

11. Government Policy Statements

We request that the Select Committee recommends to Parliament that the Government support the WSEs with funding to implement the Government Policy Statement for Water Services or explain its reasons for not providing support.

The Bill provides the ability for the responsible Minister to issue a Government Policy Statement for Water Services that will set out the Government's priorities for water services.

We are concerned that this provision provides a mechanism to significantly influence WSEs. Government priorities may potentially conflict, or be inconsistent, with policy positions of a Regional Representation Group, local authorities or mana whenua within a WSE. We fear that too many priorities will impede progress or direction.

We also request that the Select Committee recommends to Parliament that the Minister undertake an analysis of the costs and benefits of the objective of the Government Policy Statement for Water Services.

12. Feedback from our community

As mentioned previously, we are disappointed that the Government has failed to engage with, or front up to, our community on the Reform Programme.

Over the past two years, our Mayor and Councillors have received 623 emails from residents raising concerns about the Reform. None of these emails were in support of the Reform. For reference and comparison, the Council received 1719 submissions on our Long Term Plan 2021-2031 and 51 submissions on our Annual Plan 2022-2023. The most poignant observation about this comparison is that 623 emails were about a single topic, whereas the Long Term Plan and Annual Plan consider a broad range of issues across all of the Council's activities.

We recently held webinars and drop-in sessions for our community to provide them with information to make well-informed submissions to the Select Committee on the Bill. Time constraints to canvass the communities' views have been challenging. We received feedback from 21 people. All respondents voiced opposition to the reform and little feedback was received on specific provisions in the Bill. Key concerns included:

- the lack of community voice;
- ownership and appropriation of council assets; and
- having non-elected members on the proposed governance structure.

As outlined in the number of emails from residents, we suspect residents had already made up their minds by the time we sought views during this consultation period.

13. Clarification sought on entity boundaries

We seek clarification on the precise geospatial boundary that delineates the Eastern Central and Southern Water Services Entities. ***Schedule 2 Water services entities and their service areas*** of the Bill, cross-references [section 5 of Te Runanga o Ngai Tahu Act 1996](#) to define the boundary between the two entities.

It is unclear which entity St Arnaud (or parts of) fits into. The Council owns and operates a reticulated wastewater network in St Arnaud and we request that the Select Committee (or DIA) provide clarification via a map that illustrates the precise boundary. We also request that a logical and pragmatic approach be used when considering or amending boundary lines, to ensure asset networks are encompassed by a single entity.