SUBMISSION
WATER SERVICES LEGISLATION BILL 2022

1. INTRODUCTION

Taupō District Council represents communities that collectively make up over 40,000 people. They are a mixture of rural and urban and there is a large and vibrant Māori community, which is proportionally much larger than the national average.

Those communities fluctuate significantly over the seasons in response to the ebbs and flows of the tourism industry. Over winter we have an influx of visitors coming to enjoy the slopes of Mount Ruapehu, and over summer Lake Taupō draws holiday makers. Throughout the year there is a constant movement of international and domestic visitors, with 1.2 million commercial and Air BnB bed nights booked (year ending December 2022). There are dramatic swings in the number of people in our communities at any one time, more than three times the normal, and the corresponding changes in the demand for the three waters services we provide.

Our communities are also growing. On average we have been issuing 300 building consents per annum over the last 6 years. We have been able to support that growth through the timely provision of three waters infrastructure. Connecting the delivery of infrastructure with the demands for urban growth is critical for avoiding unnecessary costs for those communities and to enable them to grow.

We manage all three water services on behalf of our communities. Because of our geography we have 12 wastewater schemes and 18 drinking water supplies. Much of our urban stormwater is managed through onsite disposal to pumice soils and overland flows paths which tend to also provide recreational benefits. This is complex infrastructure to manage, with significant differences to Tauranga, Hamilton and New Plymouth. Geographically it is spread around Lake Taupō, there are multiple water sources, some of which have strong cultural connections, and our stormwater management is highly reliant on overland flow paths. We have become very good at delivering these services given decades of local experience meeting changing needs and emerging challenges. This high standard was reflected in the Department of Internal Affairs own assessment when working with Scottish Water.

Taupō is a provincial council managing strong and consistent growth within a complex three waters network with unique geography and soils. We, and the communities we represent, are concerned that our unique challenges and opportunities will be lost in a system that is attempting to combine Entity B's 22 councils and 96 Government recognised iwi authorities.

Our submission on the Water Services Legislation Bill, an amendment to the Water Services Entities Act, 2022, echoes that of our original submission and reflects that this amendment does not ameliorate our concerns.

These reforms still aren't well connected with the other areas of reform. We can see that the Government wishes to push through wide ranging changes right across the scope of central government and local government services. Frankly, the Government is trying to do too much too fast and in the wrong order. We are frustrated that the reform of three waters has preceded the wider review of local government. This infrastructure is critical to growing our communities and delivering well-beings. It has been at the heart of what we do as local government. We are also frustrated that there appears to be no integration between the changes to planning functions under the Resource Management Act 1991 and the three waters reform. **Water is a lifeline utility and the risks of getting it wrong are great**, especially at a time when any impedance to growth risks delaying much needed housing development.

We acknowledge that the current system is not suitable for all councils and that change is necessary, however we do not support the reform model currently proposed nor the pace of this reform.

We urge you to pause, do the mahi, and take the time get the three waters reform right and bring councils and communities along with you.

2. OUR KEY POINTS

2.1 Partnership to serve the community. Ultimately Government, councils and future entities have a joint responsibility to deliver systems that meet the needs of the communities we serve. The Future for Local Government reform highlights the importance of 'local voice' and the need for communities to be involved in determining their futures at 'grass roots' level. And yet reforms that actually have all the 'teeth' and decision making powers, like three waters and resource management reforms, are moving towards centralisation. There is a complete disconnect in the direction these reforms are taking and is reflected in the lack of genuine local government partnership in the Water Services Entities Act and this amendment bill.

If councils are still to have a fundamental role in providing for community needs, including planning for and facilitating growth, strong partnership is required between the proposed Water Services Entities and councils. As currently drafted Water Service Entities are to operate water services as a utility and local government is to be kept at arm's length so it cannot interfere. This is not good enough.

We have not seen any provisions in the Bill that require the Water Service Entities to take into account advice we provide to them. The inclusion of cl. 461 requiring Water Service Entities to engage with councils and others in preparation of its strategies, plans and rules is meaningless as the extent of this engagement is at the discretion of the Water Services Entities and may be via any forum that the Water Service Entities feels appropriate (cl. 461(3)), which may only extend so far as social media.

Water Service Entities must publish a report advising how stakeholder input and feedback was considered and incorporated (cl. 465), however, of arguably more importance is that advice on why council feedback was **NOT** incorporated. If you don't take on board our advice, we want to know why.

Recommendation: We recommend the Bill be modified to elevate councils' participation in three waters beyond that of stakeholder to partner, as we are, ostensibly, the owners of the Water Services Entity through our shareholding and have ongoing planning responsibilities requiring genuine collaboration with the Water Service Entity. This could be achieved by including a requirement for Water Services Entities to 'give effect to' any recommendation that has the potential to impact upon residual council responsibilities, including those relating to growth and development.

It is insufficient for the Water Service Entities to meet their engagement obligations with councils via the use of social media and cl. 461(3) should be modified accordingly.

2.2 Balanced and Fair. A balanced and fair approach is necessary for any partnership to thrive. However there are several elements of this Bill which are manifestly unfair and to quote the Local Government New Zealand submission on this Bill, establish a 'us and them' approach. Without addressing these elements Government runs the risk of establishing, and in some instances exacerbating, an adversarial relationship between Water Service Entities and councils before implementation even commences. At the heart of democracy is fairness, and the one-sided, unbalanced approach embedded in this Bill is completely unacceptable.

A few salient examples include:

2.2.1 - Water Service Entities ***exemption (or partially exemption) from rates*** - In parts of the Bill it reads that Water Service Entities are partially exempt from rates (cl. 22, new Part 6, [1].342) and in other parts they are fully exempt (cl[2] 137). In either case there is no justifiable reason for Water Service Entities to be exempt and treated differently to other utilities whose assets, like gas pipes and powerlines, are fully rateable.

2.2.2 - Bulk-charging councils for stormwater (Sch.1, cl. 63) - Allows for Water Service Entities to *bill a territorial authority directly for all the stormwater services that the water services entity provides within the boundaries of the territorial authority* however territorial authorities' responsibilities for stormwater, and associated ability to rate for stormwater, have been removed elsewhere in the Bill.

2.2.3 - Requirement for councils to continue to deliver on behalf of Water Service Entities. The Bill places requirements for councils to continue to deliver aspects of Water Service Entities' business on its behalf, with seemingly little choice in the matter as decisions are ultimately at the discretion of the Minister. Such obligations include 'pass through billing' until 1 July 2029 (cl. 22, new Part 6 cl. 342) and other matters to be captured in Relationship Agreements and Service Level Agreements. The requirement for councils to continue to deliver on behalf of Water Service Entities highlights that the pace of the reform means that Water Service Entities are not yet themselves ready to set-up their operations, leaving councils with the obligation to 'step-in'.

Recommendation: We recommend that the Bill be modified to ensure a balanced and fair partnership is established between Water Service Entities and councils by removing any manifestly unreasonable expectations on councils or exemptions for Water Service Entities as outlined in 2.2.1, 2.2.2 & 2.2.3 above. This requires courage to slow the reform to enable Water Service Entities to be fully prepared to operate from day one of the Establishment Date.

2.3 Simplification is needed as the risk of conflicting priorities is high. The amendments in this Bill increase the Water Service Entities functions from two to eighteen. Water Service Entities will need to give effect to these functions while receiving strategic direction through Government Policy Statements, Regional Representative Groups Statement of Strategic & Performance Expectations, and, in the case of Entity B, any number of Te Mana o te Wai statements from ninety-six iwi authorities.

One of the key challenges any organisation faces is prioritising many conflicting priorities. At the moment the Bill is written as 'we'll have it all', with no consideration as to how trade-offs and prioritisation, and complex decision making will be made. With the complex governance structures, it will be challenging for these groups to agree on strategic priorities, risking the timely delivery of water services needed to foster growth and ensure security of service to our communities. We have serious concerns that delivery of much needed infrastructure will grind to halt with the complex governance structures and consensus decision making requirements.

Recommendation: This amendment Bill retains the complex governance structures embedded in the Water Service Entities Act. There is no easy change to governance structures to address this issue. The overall delivery model should be reviewed with a focus on increasing the number of delivery organisations and enabling direct influence by all territorial authorities on behalf of their communities.

---

[1] Water services entity not liable for rates in certain cases
A water services entity is not liable to pay rates to any local or territorial authority in respect of—
(a) any pipes that it owns and that run through property that it does not own; or
(b) any assets that it owns and that are located on property that it does not own.

[2] cl. 137 which modifies Schedule 1 cl.3(d) of the Local Government Rating Act to make Water Services Entities fully exempt from rates.

In the event that the reform model isn't fundamentally reviewed, the Bill should as a minimum articulate the relative priority of various Water Service Entities functions.

2.4 Integrating development and growth plans. With concurrent Resource Management System, Future for Local Government, and Three Waters reforms, it is unclear how they will be seamlessly brought together into one coherent system that facilitates efficient growth and development.

Urban growth is critical to Taupō's continued economic wellbeing and development including the delivery of much needed housing. The provision of water infrastructure is a time critical exercise that enables urban growth where and when it is needed.

The Water Service Entities Act and this amendment separates planning for urban development and the provision of infrastructure, and provides no clarity regarding how integration between council's urban development plans and Water Service Entities capital infrastructure priorities will occur. We are left to presume that the details will be worked through in supporting plans. However through our engagement with the National Transition Unit it is evident that this area of implementation readiness is one of the least developed, and yet it is one of the most important for our communities. Government needs to slow down and really understand how this will work or risk creating a chaotic environment where efficient development isn't possible. Without clarity within the legislation we run the risk of being forced into competing against the demands of larger urban centres in an *ad hoc*, lobbyist manner.

Recommendation: That the Bill be modified to clearly state that water infrastructure development to occur in response to growth and development plans set by territorial authorities. Make clear within the Bill, how Water Service Entities, as 'plan takers', will give effect to council's urban development plans, and the steps Water Service Entities will take to ensure council plans are reflected within Water Service Entities' capital infrastructure priorities.

2.5 Clarity on the purpose of subsidiaries. This amendment Bill provides for Water Service Entities to '*establish, own or operate*' one or more subsidiaries, of which shares can be held on a '*licensed market*' and the Water Service Entities only need control or hold a majority shareholding. The determination of the need for, and right to establish, subsidiaries reside with the Water Service Entities Boards, and below the authority of Regional Representative Groups. It also states one of the main objectives of subsidiaries is to: '*achieve the objectives of its shareholders, both commercial and non-commercial, as specified in its statement of intent and its constitution*'. Water Service Entities assets, but not '*significant infrastructure*', may be vested in subsidiaries. 'Significant infrastructure' is not defined in the Bill.

There is nothing in this Bill to suggest that publicly owned assets, agglomerated from councils to the Water Service Entities, will not be further transferred to subsidiaries of which up to half may be privately owned, and councils either directly, or indirectly through the Regional Representative Group, will have no say in this. ***This represents a wholly different reform to that previously indicated, and goes far beyond what Taupō District Council considers reasonable devolution of power and responsibility***. The direction and control given to Regional Representative Groups excisable through the Statement of Strategic and Performance Expectations has the potential to become meaningless. The allowance for subsidiaries further disaffects local government, and the communities they represent. This strikes at the heart of local democracy.

We are incredulous that Government is proposing semi-privatisation of water services and handing over water assets to organisations that are not in full public ownership. New Zealanders and certainly Taupō District communities do not want privatisation of our lifeline assets, in any shape or form. It could be argued that subsidiaries are there to provide flexibility and privatisation isn't intended, however as drafted, there is nothing that will prevent Water Service Entities from going down the semi-privatisation path.

Recommendation: Until the DIA's intentions with regards to subsidiaries can be clarified, we strongly urge for this Bill to remove the power for Water Service Entities Boards to unilaterally establish subsidiaries.

2.6 Clarification of residual council three waters responsibilities. There is a lack of clarity regarding the water services functions that remain with councils. These appear to be transport stormwater systems, non-urban stormwater systems, regulation of private drainage, and water supply for agricultural and horticultural purposes. The Bill needs to set out a clear demarcation of council's residual three waters responsibilities.

Council's powers have been stripped out on the assumption that all of the relevant functions will be transferred to Water Service Entities, and any residual functions remaining with councils have been overlooked. Councils should retain all necessary powers to give effect to residual functions, particularly with respect to the provision of stormwater services and collection of financial contributions; rating powers; and powers to carry out works on private land in respect of stormwater.

Recommendation: That all powers enshrined in legislation prior to the Water Services Act 2022 remain intact for all services retained by territorial authorities.

3. OTHER OPPORTUNITIES FOR IMPROVEMENTS TO THE BILL

Despite our overall position being in strong opposition to the reform as currently proposed, if the Bill is to proceed we can see areas were improvements are needed.

3.1 Debt repayment provisions (Sch. 1 of the Bill introducing new Part 2 into WSE Act. Cl. 54) The Bill as currently drafted provides for Water Service Entities to pay territorial authorities for *'water services infrastructure wholly or partly used in the provision of water services'.* We have significant concerns regarding this provision as it may allow for Water Service Entities to avoid paying territorial authorities for some water services related debt, for example:

- This means that operating costs that have lawfully been funded through debt may not transfer. This could include operating costs for future planning purposes which are not currently '*used in the provision of water services*'.
- The limitation to '*wholly or partly **used** in the provision of water services*' also means that debt for work-in-progress cannot be recovered as it is not "used".
- The limitation to '*water services **infrastructure**'* also means that non-infrastructure assets that should transfer to the Water Service Entities are not covered. This would include assets such as vehicles, computers, and intellectual property. It would also cover any debt for new systems put in place for the transitional charging arrangements.

The clause also implies that there is a five year period for instalment payments as the clause is repealed five years after the establishment date. During that time territorial authorities will still hold the debt, that debt will still incur interest, and territorial authorities will still have to make interest and potentially principal repayments. Whether these costs can be recovered from the Water Service Entities is unclear. Five years is also simply too long as it will have significant impact on the debt-to-income ratios for territorial authorities.

It is completely unreasonable that local ratepayers will carry the cost of Water Service Entity responsibilities, especially when the Government's own Cabinet paper, *Pricing and Funding for Three Water Services*, notes "*the intention of the reforms is that water services are fully funded*."

Recommendation: Amend new clause 54 of new Part 2 of Schedule 1 of the Water Services Entities Act contained in Schedule 1 of the Bill, to:

- Clarify that the amount to be transferred from the Water Service Entities to territorial authorities is for all debt associated with the provision of water services, not just for infrastructure already in use.
- Clarify that the amount to be transferred includes recovery of any costs incurred by the territorial authority in holding that debt from establishment date until the repayment.
- Reduce the timeframe for instalment payments to being within 1 year of the Establishment Date.

3.2 Rural Supplies (cl. 22 of Bill provides new Part 8, cl.234 in the Act)

The Bill allows for small mixed-use rural water services to be transferred from Water Service Entities to Alternative Operators. A small mixed-use rural water service is one that '*85% of the total volume of water supplied by the service is for agricultural or horticultural purposes; and 1,000 or few dwellings rely on the service for drinking water supply…* '

It is unclear what will occur should these small mixed-use rural water services change in the future and no longer meet the above definition. It is also not clear whether the Water Service Entities will regularly monitor the Alternative Operators against these criteria.

Recommendation: That the Bill be amended to make it clear whether small mixed-use rural water services will be transferred to the Water Service Entities should changing water use (volume or number of dwellings serviced) result in the above criteria no longer being met.

3.3 Infrastructure Connections (cl. 22 of Bill provides new Part 8, cl.288-cl.317)

The Bill introduces a three-stage process for approval of new connections or disconnections. This is overly bureaucratic when compared with our current process, and we are concerned that this will add unnecessary costs and delays for new connections at a time when new connections are needed in the most cost-effective and efficient manner in order to support new housing development.

Recommendation: That the three stage connection process be simplified to reflect a timely and cost efficient approval process.

3.4 Practicality of pass-through billing (cl. 22, new Part 11, cl. 336)

We have requested in 2.3 above that the Bill be amended to remove council obligations to bill ratepayers on behalf of the Water Service Entities. Reform should not be implemented until Water Service Entities are ready to manage their own operations, including billing processes.

We question whether it is practicable for councils to bill on behalf of Water Service Entities in the first place. Will the full range of possible Water Service Entities charges and timing align with council billing processes, and will it extend to collecting Infrastructure Charges? It is likely that councils will be required to configure rating systems in order to collect Water Service Entities charges, which is a costly exercise.

Recommendation: That should pass-through billing remain within the Bill, that the Bill be modified to reflect that pass-through billing can only be forced on Territorial Authorities to the extent that it aligns with council systems and billing processes. Put differently councils will not be required to make significant changes to their data collection practices, software, processes or resources in order to accommodate a lack of operational readiness by the Water Service Entities.

3.5 Public access to reserves sitting on land transferred to the Water Services Entity.

Land with a '*primary purpose or predominant use'* that is three waters related must be transferred to the Water Services Entity as identified in the allocations schedule (WSE Act, sch. 1, cl.5 (1)). A number of land parcels owned by our council are used for multiple functions, e.g. stormwater management and recreational reserves. Although there is opportunity for council to exclude mixed-use land from the schedule or to request it be subdivided, the Water Service Entities may

not accept this request and could require council to transfer the land to it. Where mixed-use land is transferred to the Water Services Entity, there are no guarantees that free public access to it will be retained in perpetuity. This is very important for our communities and needs to be addressed.

Recommendation: The right to freely access recreational land after it is transferred to the water services entity should be enshrined within the Bill. We recommend that a new provision is inserted in the Bill that guarantees this right in perpetuity.

_____

David J Trewavas JP

Mayor - Taupō District Council

Key contact: Louise Chick, Programme Manager