

# SUBMISSION

## WATER SERVICES ENTITIES BILL 2022

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### 1. INTRODUCTION

Taupō District Council represents communities that collectively include 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 visitor industry. Over winter we have an influx of people coming to enjoy the slopes of Mount Ruapehu, and over summer Lake Taupō draws holiday makers. Throughout the year there is the constant movement of international and domestic visitors, with 942,000 commercial and Air BnB bed nights booked (year ending November 2021). 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.

We have chosen to make this submission because the management of the three waters services to our communities is absolutely critical. We remain opposed to the reforms as they are planned and our submission to the Bill is based on this position. Time needs to be taken to get this reform process right as the costs, both direct and indirect, will be crippling for our communities if we don't.

### 2. OUR KEY POINTS

- 2.1 **We agree that change is necessary.** We acknowledge the increasing demands on these water services related to urban growth, pressures from the current funding models based on rates and the drive for better environmental outcomes.
- 2.2 **We don't agree with how the Government has approached these reforms.** Councils, as service providers, have been universally tarred with the same brush. There has been little recognition that many councils are excellent managers of the water services they provide, and that substantial community investment has been, and continues to be, made. We can see potential to combine stronger environmental regulation, linked to more sustainable funding models that move away from rates, but are still based on local delivery with all the benefits that provides. This requires courage from legislators to take a breath and allow time to properly explore these options.

- 2.3 The proposed model is overly complex.** One of the key challenges any organisation faces is prioritising many conflicting outcomes. 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 may be tricky for these groups to agree what the priorities should be. Our concern is that the views from within the new water service entities will override those of the community.
- 2.4 The drive for efficiencies won't actually be achieved.** There appears to be an ideological drive to centralise the planning and delivery of services. This has been justified because it will deliver significant cost efficiencies for consumers and better environmental outcomes for the community. We don't believe this, mostly because we have on the ground, real experience actually delivering these services. Chasing cost efficiencies through scale and centralisation is likely to lead to more layers of bureaucracy, ineffective decision making and poor visibility across the organisation and then exploitation by contracted service providers.
- 2.5 The clear drive to separate the delivery of three waters services from the communities that they are provided for will disenfranchise those communities.** Water services are not like power and telecommunications. You can cut ties with one power company and sign up with another. That doesn't apply to water services and means that they needed to be treated differently to other utility services. These services fundamentally shape the growth and well-being of our communities. We don't expect a utility organisation potentially based in Hamilton, Tauranga or New Plymouth, to understand the needs of our communities several hours away. Their delivery needs to remain with local organisations that know and understand those communities.
- 2.6 The critical link between planning for urban growth and providing three waters infrastructure needs to be better.** We can see that the proposed Bill has tried to make the connection, however it needs to explicitly involve territorial authorities. As councils we have legislative responsibilities to enable urban growth so that the residential, industrial and commercial land markets operate efficiently and effectively. Urban growth is also critical to Taupo's economic wellbeing and development. We need to connect the demands for different land uses with the provision of infrastructure to enable it to happen. That is a time critical exercise. This Bill, physically and institutionally, separates planning for urban development and the provision of infrastructure. We think that will lead to inefficiencies and poor outcomes. There is nothing in this Bill that suggests the growth needs of our communities will be met in a timely manner. It hamstrings our communities' ability to drive growth in our district, and forces us into competing against the demands of larger urban centres.
- 2.7 Our voice and the voices of our communities won't be heard.** We can see the window dressing in this Bill and it provides no comfort at all. There is a regional representative group that we are unlikely to have a seat on, given there are 22 councils and only a maximum of seven seats. There is the potential for regional advisory panels, but there is no certainty they will exist or that we will be part of one. Even if they are established, they are effectively toothless with no decision making or influence on the development of strategic and performance expectations. There are token requirements for engagement, but the message is clear: The Western-Central Water Entity is to operate water services as a utility and local government is to be kept at arms-length so it cannot interfere. This strikes at the heart of local democracy. It's not good enough.
- 2.8 Our communities' ability to drive how our places function is threatened.** Provision of three waters infrastructure is inextricably linked to placemaking, a core function of Council. Without a three waters voice, how do our communities determine how our spaces are used and ensure their needs are met? Again, local authorities need to be explicitly involved in three waters decision making.
- 2.9 These reforms aren't connected well 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 little integration between the changes to planning functions under the Resource Management Act 1991 and these reforms.
- 2.10 We are concerned about the impact of reform on business as usual.** While these reforms progress, and we respond to information requests and calls for staff time, the business of continuing to provide water services and the required infrastructure upgrades remains. The pace of these changes, combined with the current labour shortages as a result of COVID and immigration settings, mean that this is put at risk. The response from the Government has been

that they will “pay to backfill” this labour shortage. The reality is that there is no one to pay. The only sensible solution is to slow this down.

- 2.11 There is no certainty in the Bill about the equalisation of costs.** One of the fundamental elements of the proposed reform was the equalisation of costs over the Entity areas (so that the larger populations would assist the smaller populations to achieve compliance). There is no reflection of this in the Bill, and we are told that there is no expectation for this to be included in the second Bill. It will be left to the Entities to determine. This is unacceptable given this financial rationalisation was a fundamental element of how the reforms were sold. This needs to be provided for and protected in the legislation.

### 3. OUR VIEWS ON THE PROPOSED BILL

Despite our overall position being in opposition to the reform process as proposed by the Government, if the Bill is to proceed we can see areas where improvements can be made.

#### 3.1 The allocation of shares in water services entities (section 16)

Shares in a water services entity are allocated based on the usually resident population of the district. In our case, with a population of just over 40,000 people, this would equate to one share. This is a simple approach, however it fails to reflect the reality of our communities.

We have substantial swings of more than three times the usually resident population when we reach our peak visitor numbers over summer. This peak is what we need to provide three waters infrastructure for, not the usually resident population. As a council we represent the needs of all these people, not just those who reside in the district.

In our view it would make more sense if shares were allocated based on the number of consumers who are being served by the water services entity. At present approximately 20% of our homes across the district are holiday homes. These people typically reside in places like Auckland, Wellington and Hawkes Bay. They have a significant interest in the ongoing operation of the proposed Western-Central Water Services Entity and deserve to be represented even though they might not reside here.

For a location like Taupō, the number of connections or the ratepayer base is a more sensible measure than the usually resident population. Given that, we support the submissions of Thames Coromandel District Council and Queenstown Lakes District Council. We believe that the use of population for both the distribution of shares and for funding arrangements is nonsensical.

**Recommendation:** Shareholdings should be allocated based on the number of customers or ratepayers rather than a simplistic usually resident population count.

#### 3.2 Regional Representative Group (section 27)

The regional representative groups provide the primary influence on the planning decisions of the water entities. The Bill as currently drafted provides little opportunity for the communities of Taupō district to have a representative on that group. We will be one of 22 councils vying for a maximum of seven seats. This will make it incredibly difficult to influence the decision making of the representative group and ultimately the water services entity.

There is no easy amendment to the governance structures proposed in the Bill to address this issue. This requires the courage to step back and review the overall model of delivery and governance.

**Recommendation:** 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.

### **3.3 Regional Advisory Panels (Part 2 Subpart 5)**

We can see that these panels are an attempt to enable territorial authorities to have a voice in the governance structure. Unfortunately, the Bill doesn't require them to be established and provides no certainty that the communities of Taupō district will have direct representation. As a minimum we would expect that our communities would have that assurance of a direct voice.

**Recommendation:** Amend the Bill to make establishment of regional advisory panels a requirement, with a seat at the table assured for all territorial authorities.

### **3.4 Government Policy Statement (section 131)**

When the Minister prepares or reviews a Government Policy Statement on water services they must consult with a number of specific stakeholders as listed in section 131(b). Given the critical role territorial authorities play in managing urban growth we believe that they should be added to this list. We do recognise that there is a catch all statement which refers to "*other persons, and representative groups of persons, who have an interest in water services*". We don't believe it is appropriate to rely on territorial authorities being picked up in that vague statement.

**Recommendation:** Amend section 131 to explicitly require the Minister to consult territorial authorities on the development or review of a Government Policy Statement.

### **3.5 Statement of Strategic and Performance Expectations (section 135)**

The regional representative group must prepare a statement of strategic and performance expectations. This is the most critical document that they will prepare. It shapes the overall direction of the water services entity and must be given effect to.

Despite this high level of importance there doesn't appear to be an identified process for how it is to be prepared. It seems to be left completely up to the representative group to resolve how they will do this. There is no guarantee that individual territorial authorities, or their communities, will have any input. This is completely unacceptable. It is in stark contrast to the requirements placed on councils related to the development of long-term plans.

**Recommendation:** Amend the Bill to set out a minimum process for the development of strategic and performance expectations documents, including requirements to engage with territorial authorities.

### **3.6 Consumer forum (section 203)**

The Chief Executive of the water services entity must establish a consumer forum. The forum is to enable effective and meaningful engagement and it is left to the Chief Executive to decide the form and nature of the forum. While we are supportive of such forums being required, there is not sufficient detail in the Bill to confirm whether the communities of Taupō district will actually be represented through such a forum.

**Recommendation:** Amend the Bill to confirm that at a minimum representation from the urban and rural areas of each territorial authority will be required as part of consumer forums.

### **3.7 Secondment of employees during the establishment period (Schedule 1 clause 11(2)(a))**

There is a duty for local government organisations to co-operate with the department and water services entities during the establishment period. This is reasonable in the circumstances. What we are concerned about is the requirement to comply with reasonable requests to second employees.

There is no guidance as to what this might mean in practice. This could happen from after the Bill receives Royal assent and raises concerns about how the council would continue to operate if it lost key three waters staff. Large metropolitan councils may have greater flexibility given the size of their three waters teams, however medium sized and smaller councils don't have that luxury. We have business as usual, and a very substantial capital works programme related to the three waters. We need to deliver those in a timely manner for our communities and the environment.

We have and will continue to reluctantly participate in the transition to the new water services entity to ensure we are able to advocate for the best outcomes for our communities and staff. But we need the Government to understand that this transitional work is currently imposing costs on our communities and taking staff away from delivering water services right now. There are only so many skilled people who can operate in this field. We need to see some reciprocal support from Government to enable us to continue to operate during the transition.

**Recommendation:** Amend Schedule 1 clause 11(2) to make it clear what a “reasonable request” would entail. In our view it would be unreasonable to take staff for more than 8 hours per week. We also want you to consider limiting secondments to those larger councils which are in a better position to sustain them. Lastly, the transition to the new water services entities needs to happen at a pace that is sustainable. What we are currently doing is simply too fast.

### 3.8 Limits in Council's decision making (Schedule 1 clauses 21-24)

Once the Act has Royal assent limits will be imposed on Council decision making to an unacceptable extent. We can understand the intent of these provisions: territorial authorities shouldn't make decisions that prejudice the future operation of the relevant water services entity. We are comfortable with that intent, but we think the current proposed provisions go too far.

The restrictions are very broad and seem to include decisions made by elected members and those made by officers under delegation. The reference to decisions relating to the provision of water services, or that may affect the provision of water services, could be incredibly wide. This could include decisions like the:

- adoption of the Annual Plan
- notification of changes to District Plan zonings
- purchase or disposal of assets
- variations to a contract to deliver a capital work
- approval of unbudgeted expenditure related to increases in project costs
- consideration of a bylaw that creates a dog exercise area in a stormwater gully

The scale of uncertainty could be reasonably reduced if the list of decisions was limited to those identified in clause 21(b).

The fundamental issue with these provisions is the potential for them to create significant time delays and grind our work to a standstill. Information on all of these decisions must be provided to the Chief Executive of the Department overseeing the transition. Councils will then need to wait for the Chief Executive to decide whether to review the decision. As a simple example, we cannot set rates for the financial year until the Annual Plan has been adopted. If we are waiting three months for the Chief Executive to approve the adoption of our Annual Plan (given all Councils are doing this at the same time of year) we won't be able to proceed with our work programme or generate our main source of income.

The Chief Executive will potentially be inundated with paper work and will reasonably need to take some time to consider each proposed decision. We don't expect that to happen in a matter of days or even weeks. In the meantime, our work will sit in limbo.

Furthermore, we are concerned that should the scale of the transition, or a change in Government, lead to an extension of the Establishment Period, Councils may be faced with Government oversight and delayed decision making for an extended period.

**Recommendation:** Amend schedule 1 subpart 4 – Oversight powers of department, so that there is a significantly reduced list of potential decisions that are affected. This could be done by making clause 21(b) an exhaustive list. We also recommend removing references to adoption of annual plans. Finally, we note that there are several references to “long-term council community plans”, we believe that these should be amended to “long-term plans” in accordance with the Local Government Act 2002.

### **3.9 Employment issues (Schedule 1)**

The transitional provisions related to employment (Schedule 1, subpart 3) create uncertainty for us as an employer and for our staff. We are worried about such uncertainty leading to staff leaving the industry at exactly the time when we need them to remain.

The interaction between clauses 16 and 18 is unclear. The language could be improved to make it clear that the provisions in the legislation will override any clauses within collective agreements or individual employment agreements. By way of example:

- Our current collective agreement states that employees would be entitled to redundancy if they accepted a role that is less beneficial in terms of terms and conditions, however, it is unclear who decides whether the new terms and conditions are similar.
- Further, if they are offered a role and don't accept, the Bill suggests that they wouldn't be eligible for redundancy. This would run counter to the terms of our current collective agreement.

Clause 19(3)(a) suggests that the water services entity can ratify a collective agreement without an employee accepting a role i.e. ratifying an agreement that an employee has not cast their eyes over. Essentially, an employee would be entering into a contract they have not agreed to, and further clause 20 allows for the union to end existing contracts – leaving our employees with no options.

Clause 20(4) allows for the union of an existing collective arrangement to terminate the collective arrangement without consultation with employees. Our current collective agreement has three different types (or departments) of workers within it, and it is unclear what happens to the existing arrangements of these areas if it's terminated early.

**Recommendation:** Further clarity is required on how current collective agreements or clauses within an individual employment agreement will be treated during the transition. Provide additional clarity around who is the decision maker in terms of assessing whether roles and terms and conditions are 'similar'.

### **3.10 Civil Defence Emergency Management**

Water Services Entities will take on stormwater management responsibilities and associated overland flow paths. Consideration should be given to how the new Water Services Entities will participate in Civil Defence Emergency Management activities.

**Recommendation:** State how Water Services Entities will participate in Civil Defence Emergency Management and identify their accountabilities with regards to flood management.

**David J Trewavas JP**

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