

# Submission to the Finance and Expenditure Select Committee on

## WATER SERVICES LEGISLATION BILL



17 February 2023

### Introduction

1. The Timaru District Council (TDC) thanks the Finance and Expenditure Select Committee for the opportunity to submit on the Water Services Legislation Bill.
2. This submission is made by the Timaru District Council, 2 King George Place, Timaru and is authorised by the Mayor, Nigel Bowen who has the unanimous support of all Councillors on the issue of Water Services reform.
3. The contact person regarding the submission content is Bede Carran, Chief Executive, Timaru District Council ([bede.carran@timdc.govt.nz](mailto:bede.carran@timdc.govt.nz)).
4. Timaru District Council (Council) wishes to speak to its submission.

### Council's position on the Three Waters Reform programme

5. TDC remains fundamentally opposed to the Water Services Reform programme in its current form for reasons provided in earlier submissions prepared on the reform agenda. TDC through C4LD, has publicly asked the Labour government to review this policy agenda and work with councils to ensure the retention of local influence with any changes made to the delivery of water services. This request remains open.
6. Given the introduction of the proposals presented through the Water Services Legislation Bill (on 8 December 2022) prior to the final royal assent of the Water Services Entities Bill (on 14 December 2022), we are sceptical on the motivation for vast sections of the newly approved Water Services Entities Act to now be replaced.
7. Council fully endorses and supports the submission of Communities for Local Democracy (C4LD).
8. We are also supportive of submissions presented by Local Government New Zealand and Taituarā.
9. However, TDC has a duty to ensure that as the Water Services Reform proceeds, the rights of people and communities as users of these services and the reforms

are designed with the best interests of the Timaru District at heart. Clearly it is essential that water supply remains on tap, wastewater is effectively treated and stormwater is managed well. We acknowledge the new Prime Minister has indicated a relook at the water reforms, but at time of writing it is unclear where these will focus.

### **Concern at the Pace of Reform**

10. Council remains concerned at the pace of reform and the ability of central and local government to achieve the reform agenda. This has come at a time of significant disruption following the Covid-19 pandemic and multiple severe weather events nation-wide, most recently the disastrous consequences of Cyclone Gabrielle.
11. Councils remain under significant pressure with ongoing government reforms, weather events, community expectations to deliver services in a challenging global and national environment, cost pressures, resourcing and contracting challenges and ongoing delivery of business as usual services.
12. Council believes there is a need to slowdown the pace of the reform agenda and transition, ensuring there is time to ensure a greater understanding from all parties of the reform implications and how these will play out in practice. Council is well aware of the intrinsic complexity of bringing together these services across the country, but believes the current reform programme and timetable is inadequate to establish and adequately test the capacity and capability of the four new Water Services Entities (WSEs).
13. Cyclone Gabrielle has exposed New Zealand's infrastructure vulnerability and increased our infrastructure deficit. There is no doubt that more effort, more funding and more work is needed to increase our resilience in the face of climate change. However, less than 17 months from now, on 1 July 2024, the water entities are scheduled to be operational, able and ready to respond to events such as Cyclone Gabrielle.

### **The Water Services Legislation Bill**

14. We acknowledge the purpose of the Bill is to:
  - establish and empower water services entities by setting out their functions, powers, obligations, and oversight arrangements; and
  - provide for the transition arrangements during the establishment period so that WSEs can commence service delivery from 1 July 2024 or earlier by Order in Council.
15. This submission highlights areas of potential concern with the Water Services Legislation Bill. A separate submission has also been prepared on the Water Services Economic Efficiency and Consumer Protection Bill.

## **Pass-through Billing**

16. The Bill contains the ability for pass-through billing arrangements to be established with territorial authorities to collect charges on behalf of the water entities up until at least 1 July 2029. These would be provided for the 'reasonable cost' of providing the service.
17. Council is fundamentally opposed to this approach, and believes that the charges should be collected directly by the water entities. Councils should not be forced to collect charges for an interim period of at least five years.
18. If this does go ahead, it will create opportunity for significant potential confusion and not reinforce the separation of delivery of water services from Councils, as the reform is designed to achieve.
19. In Timaru District Council's case, depending on the approach taken, this will be effectively mean we are collecting charges for services for three entities (TDC, Environment Canterbury and the Water Services Entity) on the one bill.
20. Council will likely continue to field enquiries and complaints both on water services bills and service requests, especially where there is no separation of invoicing, as consumers will respond simply by association. This will make Council a scapegoat for ongoing complaints on these services and billing enquiries and potentially impact our reputation.
21. The recovery of costs for this function will be difficult to determine due to the integrated nature of these services in Council systems. Not only will there be the direct costs of provision, but also the opportunity cost of staff diverted from normal Council functions at different stages of the year.

## **Water Services Entity (WSE) – Council and other relationships**

22. The Bill outlines requirements relating to relationships between the WSEs, Councils and other infrastructure providers, including energy, telecommunications and roading.
23. These are critical relationships to establish and maintain at all levels of each organisation, including governance and officer levels. The Bill should ensure that appropriate mechanisms are in place to safeguard this and ensure clear information flows, effective processes, environmental protection and prevention of barriers to growth.
24. Given the unique position of Councils in the historical delivery of water services, this is an especially important relationship that must align water services delivery with the strategic direction and community wellbeing aspirations of individual communities. This includes attention to balancing the environmental, social, cultural and economic development needs of communities and ensuring future water services are developed to meet future growth needs.
25. The strength of these relationships is essential to the success of the delivery of water services. Relationship agreements, as specific under Section 467-469 of the

Bill should include all relevant means to enable a joined up focus to achieving local needs.

26. In addition, review of these relationship agreements should occur on a more frequent cycle than every five years. At a minimum, it should be aligned to the electoral cycle.

### **Accountability and Local Democracy**

27. In addition, the legislation should recognise the unique position of Council in achieving outcomes for their communities, and the need for the WSEs to work 'hand in glove' with Councils to enable these.
28. While delivery of other infrastructure has maintaining public health as a component, this is a key focus for the delivery of water services (especially Water Supply and Wastewater). The legislation needs to ensure this fundamental responsibility of water services is sufficiently acknowledged and protected.
29. Councils are accountable to and engaged with their communities for the delivery of all their services. With the removal of water services activities from Councils, this will not disappear. Communities will still expect Council to maintain their communities' interests in delivering excellent water services.
30. The legislation should ensure that WSEs recognise Council's unique position and enshrine greater capacity for the entity to listen to Council's concerns. It should also enable Council to be able to challenge decisions made by the entity.
31. WSEs accountability to the community will need to mirror local Councils. Achieving this for an entity (i.e. Entity D) that covers nearly the entire South Island will be challenging at best.

### **Council Bylaws**

32. The Bill establishes regulatory functions and powers to enable WSEs to regulate water services in place of current local Council arrangements (i.e. bylaws). Essentially local bylaws relating to water services will cease to exist from 1 July 2024.
33. Currently, Council has bylaws relating to Water Services and Water races, which will be subsumed into the new compliance and enforcement regime established by the WSEs. While the Bill establishes the regime, including a Director of Compliance and Enforcement independent role, it is unclear how this will work in practice and how the provisions of these bylaws will be translated. Either way, it will be critical that this regime is sufficiently robust, tested and ready to go on 1 July 2024.

### **Controlled Drinking Water Catchments**

34. The Bill includes powers to designate controlled drinking water catchments, which are intended to ensure enhanced source water protection, one of the key findings of the Inquiry into the Havelock North contamination incident.

35. Council supports this concept and the need to safeguard these critical source water catchments. It is important that catchments are clearly defined and that any designation is well integrated with other plans (e.g. Regional Council).

### **Geographic Average pricing**

36. The Bill outlines that charges for water services by WSEs may be set by a fixed or variable fee including volumetric charging.
37. It also introduces the concept of geographic average pricing, described as a tool to smooth and share costs across communities. The Bill enables a WSE Board to charge geographic average pricing for different service groups and consumer groups.
38. Council is concerned at how geographic average pricing might be implemented. How will it be fairly applied to Timaru District? How will historic service inequities and the historic contribution of Timaru District residents and ratepayers to their water services be fairly reflected?
39. We believe that the system's core principle should be that charges for water services should reflect the cost of service provision. Where significant historical investment has already been incurred by communities on establishing, maintaining and developing water services, they should not be forced to pay for the costs of other communities where these services are been historically inadequate.

### **Water Services Entity and Crown funding**

40. The legislation in Clause 342 indicates that WSEs will not be liable for rates for any pipes or assets it owns which run through property or on land that the WSE does not own. This represents a different treatment from energy and telecommunication providers which are all fully rateable.
41. Council believes these categories should be fully rateable for WSEs.
42. In addition, the legislation exempts the Crown from paying water infrastructure contribution charges. Council believes this clause (Clause 349) should be removed, and the Crown should pay a fair share towards the development of water services.

### **Rating Issues**

43. The legislation outlines that WSEs will use information from the District Valuation Roll (DVR) prepared by Councils for rating purposes. The cost of this is currently shared between territorial and regional Councils as per the provisions under rating law. As WSEs will be extensively drawing from this information for their own purposes, Council believes it should be compensated for its costs.
44. Additionally, the legislation outlines that the rates rebate scheme will be extended to include water bills from WSEs. This scheme is currently administered by Councils with rebate funding provided by the government. The legislation indicates in Clause 318 that this will continue for water service charges. Again Council

believes that there should be no additional costs created for Councils through the extension of this scheme.

45. Currently, Councils have rates remissions policies that set out specific remissions for organisations like community organisations or schools and in specific circumstances. These apply to water services such as water supply and wastewater, subject to application. With the establishment of the WSEs, Council will consider whether these policies remain appropriate.
46. The legislation only makes reference to the WSE chief executive being able to discount charges “to any class of consumers or individual consumers that take measures to reduce the burden of water services”. It is unclear what this will mean in practice, how it will be applied and whether it will target the same organisations and groups that Council’s current policies applies to.

## **Recommendations**

Timaru District Council recommends:

- The Committee note Council’s position on Water Services reform and support for the C4LD submission and other submissions as presented
- If the government decides the reform will proceed, the pace of the transition is slowed to enable a robust system to be designed, tested and made ready
- That Councils should not be forced to collect charges on the WSE behalf
- That the unique position of Councils is recognised in the relationships established with WSEs and that relationship agreements are reviewed more frequently
- That greater ability is provided for Councils to challenge WSE decisions
- That clarity is provided around the application of Councils existing bylaws from 1 July 2024
- The Committee notes Council’s support for controlled drinking water catchments
- That geographic average pricing is used only where it recognises that historical contribution of Timaru district residents and ratepayers to their water services
- That WSEs are liable for rates where pipes or assets it owns run through property or on land the WSE does not own, akin to other infrastructure providers
- That the Crown is not exempt from paying water infrastructure charges
- That Councils are fairly compensated for costs incurred in administering the Rates rebate scheme on behalf of WSEs where applicable
- That clarity is provided around the application of the discount approach proposed by the Act in relation to rates remissions policies.

A handwritten signature in blue ink, appearing to read 'Nigel Bowen', followed by a period.

Nigel Bowen

**Timaru District Mayor**