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Secretariat  
Finance and Expenditure Committee  
Select Committee Services  
Parliament Buildings  
WELLINGTON 6160

Tēnā koutou

### **Submission on the Water Services Entities Bill**

The South Taranaki District Council (STDC) thanks the Finance and Expenditure Select Committee for the opportunity to make a submission on the Water Services Entities Bill (the Bill).

STDC accepts that regulatory change is needed in the 3 Waters area and that the regulatory arrangements did not work under the previous model. As noted further on in our submission, our preference is that the new regulator (Taumata Arowai) is given the time to prove its value before implementing such significant changes throughout the 3 Waters sector.

STDC understands and supports the objectives of the Bill, which include requirements to:

- (a) Deliver water services and related infrastructure in an efficient and financially sustainable manner.
- (b) protect and promote public health and the environment.
- (c) support and enable housing and urban development.
- (d) operate in accordance with best commercial and business practices.
- (e) act in the best interests of present and future consumers and communities.
- (f) deliver water services in a sustainable and resilient manner that seeks to mitigate the effects of climate change and natural hazards.

We believe we are already delivering on these objectives, and we have a continuous improvement approach to delivering water services to our community.






Our Council has a positive track record for delivering 3 Waters infrastructure and for building, maintaining and operating this infrastructure and we certainly have the financial capacity to continue to do this via our Long Term Investment Fund. For example, we have committed \$133 million in our current Long Term Plan for 3 Waters upgrades.

As noted further below, the Water Industry Commission of Scotland (WICS) report predicts it may take until 2050 for New Zealand to match Scottish Water's performance. We are also aware, via media, that WICS even today is not immune to ongoing issues in the 3 Waters area, such as overflows into waterways. We hope we do not match them in regard to this type of performance. Under our own Long Term Plan, the Council would have achieved the infrastructure outcomes that the Government is seeking, well before 2050. We struggle to see the value for our communities in the proposed reforms.

Overall, STDC is disappointed with the Government’s handling of this proposed reform. There has been no meaningful consultation with Iwi, Councils or our Community; the promise of ‘opting out’ was taken away and generally, it has been councils that have had to continue to engage in good faith and not the other way around.

**So, from this point of view, the Council does not support, and has very serious concerns with, the Bill as proposed.**

There are a number of key flaws in the model including:

<b>01</b>		<b>Overstated investment</b>	<ul style="list-style-type: none"> <li>• \$185 billion needed investment implausible</li> <li>• Flawed and biased Scottish models used</li> <li>• Council and expert analysis is more reliable</li> <li>• Peer review has highlighted serious flaws</li> </ul>
<b>02</b>		<b>Risk of higher bills</b>	<ul style="list-style-type: none"> <li>• Claimed cost savings are highly implausible</li> <li>• Government expert backtracked on cost saving</li> <li>• 60% opex saving claimed, but no jobs will be lost</li> </ul>
<b>03</b>		<b>Poor accountability</b>	<ul style="list-style-type: none"> <li>• Accountability to public is weak</li> <li>• Local variability for resilience and climate change lost</li> <li>• Regulation cannot fix the accountability flaws</li> </ul>
<b>04</b>		<b>Increased fiscal risk</b>	<ul style="list-style-type: none"> <li>• Crown fiscal increases due to poor accountability and overstated investment need and debt</li> <li>• Mega entities are effectively Crown guaranteed</li> <li>• No equity obligations on councils</li> </ul>
<b>05</b>		<b>Poor policy process</b>	<ul style="list-style-type: none"> <li>• DIA's poor process failed to consider options</li> <li>• Impact of improvements in regulation not properly considered</li> <li>• Historical reform episodes overlooked</li> </ul>

*Reference: Flaws in the Water Services Entities Bill – Castalia Report to C4LD, July 2022*

The following five points summarise the Castalia report to Communities for Local Democracy (C4LD), dated July 2022, with our comments added.

### **1. Overstated Investment**

It is acknowledged that capital investment is needed in some parts of New Zealand now and over the next 30 years to meet growth demands and make up for historical deferred funding and underinvestment. It is noted that there have been some high-profile asset failures; however, it is not plausible that the required investment is as high as the government claims.

The Government, based on Water Industry Commission of Scotland (WICS) modelling, claims New Zealand water services require \$120-185 billion of capital investment over the next 30 years. This is based on a top-down New Zealand-wide assumption, driven by inappropriate United Kingdom (UK) comparators, that a massive nationwide investment programme is necessary for all council water services. This is despite all local councils submitting Request for Information (RFI) documents that included detailed bottom-up information about planned capital investment.

Peer reviews of the Government’s analysis do not conclude whether the Government’s crude modelling results are a reasonable prediction of a New Zealand-wide investment requirement. When experts have reviewed the modelling on a council-by-council basis, they have found serious flaws with the Government’s analysis.

## **2. Risk of Higher Bills**

The Government is claiming that the Bill will deliver lower household water bills but it is not clear where the major savings the Government claims will be made under the current proposed model. The Department of Internal Affairs (DIA) refers loosely to economies of scale and the ability to borrow up to 800% of revenue. We have serious concerns regarding prudent management of the finances for water infrastructure, with the proposed borrowing to revenue ratio. This, coupled with the removal of local ownership, creates an easy path for future governments to sell off Aotearoa's most precious resource.

Our independent research shows water bills are likely to be higher if the claimed investment is made. This is because the cost savings the Government claims are possible are unsupported by clear evidence. If the mega entities invest at the predicted level it is highly probable that water users will face unsustainable bills, greater than through the current structures. The Government's claims are based on implausible assumptions and faulty modelling that exaggerates the benefits of mega entity reform. We note the rhetoric surrounding cost savings has shifted from specific numbers provided to each council showing a phenomenal saving to ratepayers, to vague references of not being able to actually quantify costs until the transfer of assets is complete and the entities are operating. This removes the key basis for establishing the entities.

Some of the key issues are:

- Implausibly high capex and opex efficiencies assumed for the mega entity reform, underpinned by vague references to economies of scale and borrowing power.
- Most councils are assumed to achieve no efficiencies without vast amalgamation.
- The Government's modelling that was provided to all councils makes additional assumptions that exaggerate the benefits of reform.

## **3. Poor Accountability**

Accountability to the public is important because water services are natural monopolies and water is a resource that is essential for community wellbeing. The typical ways that customers hold a service provider accountable are not available, for example by choosing an alternative, reducing consumption, or demanding better service. The complex governance structure chosen for the mega entities undermines accountability to the public and key communities of interest.

Appropriate accountability in the new entities is of significant concern to STDC. The latest tweaks to the Governance arrangements give STDC zero comfort that our local concerns and infrastructure needs will be addressed, let alone met. STDC has no concerns relating to the co-governance arrangements, but we categorically oppose legislation that takes ownership of local water services away from local communities.

The Government's approach to water reform has not been robust. The Government was previously in charge of ensuring drinking water was safe, through the Ministry of Health, and it failed in its duties. Fixing this is necessary and makes sense and STDC agrees with the establishment of Taumata Arowai. Beyond this, the Government's approach has not been transparent and there are a number of examples where councils have requested further information or data, and this has not been forthcoming. One example is the numbers in the council dashboards that Government provided that show significant savings for ratepayers. STDC's requests for further information on how the Government came to the very low cost for water under the Government's proposal were met with vague references to economy of scale and increased debt capacity.

We note the Government plans to use the LGFA to debt fund infrastructure under the proposed entities, a funding agency established and owned by councils, not the Government.

STDC was part of a national steering group to address significant anomalies in the DIA's recording of the current water complaints process. This work has been held up for years by the DIA, despite many hours of work being put in by councils and Audit NZ and several attempts to connect with, and get action from, the DIA. There is still no outcome from the DIA on this matter and so the recording of 'water complaints' continues to cover any call that councils receive relating to water, whether it is an actual complaint or not. We expect this process will be corrected for the new entities, and this will result in a significant reduction in actual water complaints, which would distort any comparison between what is happening now and what the entities are actually doing. We expect the Government to be very accurate, transparent and honest in the presentation of current and future water complaints data.

We note that the DIA claimed Standard and Poors supported the Government's proposed approach. Standard and Poors have clarified that they do not support the Government's approach on this or anything else. They are simply a financial rating organisation and have no view on whether the Bill should proceed. We found the Government's advertising to be blatant propaganda and that debate on the issues was steered towards a 'them and us' solution, rather than allowing for an important community debate or discussion.

#### **4. *Increased Fiscal Risk***

The proposed reform will create four of the largest firms by asset value in New Zealand. The Crown will provide a fiscal backstop under the proposed reform model, according to Standard & Poors' latest report to the Government. Significant risk will be transferred to the Crown, and therefore the taxpayers, without the typical control and accountability mechanisms. We presume that the Crown is aware of this risk and we have concerns about the possible negative effects on Government spending in other areas as a result of higher than expected 3 Waters costs.

#### **5. *Poor Policy Process***

It is our view that Government officials and consultants did not appropriately review the options, which placed Ministers in a difficult position. Although the literature states that many options were looked at, effectively, only one reform option was presented, and our communities feel betrayed after promises made by the Government to engage and consult with them were not honoured.

The Government focused on the issue of "scale" and ignored the evidence of how even a modest improvement in the regulatory regime would improve outcomes. Until 2020, responsibility for water quality regulation sat with the Government, through the Ministry of Health, under the Health Act 1956. The Ministry completed just one prosecution in over 60 years of regulatory responsibility (the prosecution related to the tragic Havelock North events). The Havelock North inquiry established that this weak regulatory regime, in turn, provided weak incentives for drinking water providers to meet minimum safety standards. Water services have objectively improved in many cases from a combination of heightened public scrutiny, expectations of stricter regulatory standards and the creation of a new regulator.

Our preference is that this new regulator (Taumata Arowai) is given the time to prove its value before implementing such significant changes throughout the 3 waters sector.

STDC supports the submission provided by C4LD. The proposed C4LD plan is robust and is supported by councils that represent approximately 1.35 million New Zealanders. A considerable amount of this population number sits across the rural and provincial sector – an area that is likely to experience what we believe will be poorer outcomes for our communities - a reduced level of service and higher costs.

In addition, we provide the following comments on more detailed aspects of the proposed Water Services Entity Bill that relate to:

- New Entities
- Proposed Structure
- Contracting Out
- Employment & Resourcing
- Planning & Oversight
- Entity Engagement
- Divestment Proposal

### **New Entities**

STDC remains unconvinced that the proposed four water entities for New Zealand are the best model; however, STDC, through previous feedback to the Government, has undertaken its own assessments and is convinced that the model proposed by C4LD and the associated funding improvements would be a more effective model, and it will achieve the Government's outcomes.

STDC has established a good working relationship with our Iwi partners and we are already successfully working in partnership across many spheres that continue to strengthen these relationships. STDC believes that the proposed model will significantly reduce the amount of information sharing, conversations and joint decisions making on 3 Waters infrastructure and particularly where critical infrastructure is being implemented locally.

We understand that the establishment of the Western-Central Entity (Entity B) would involve bringing together a large number of Iwi and hapū groups and asking them to select six or seven mana whenua representatives to be part of a regional representative group and possibly one or more regional advisory panels. We are uncertain as to how this could possibly succeed in practice; however, we equally understand that this is a matter for Iwi/Māori to resolve. Our approach, as mentioned above, has been to work more closely with each of our Iwi partners on proposed new infrastructure and provide updates and discussion on a quarterly basis. There appears to be no mechanism for this level of detail and conversation to occur via much larger entities.

The formation of the Western-Central Entity requires 22 territorial local authorities with very different priorities, interests, and foci to select regional representatives and work together for the common good. We note the collective duty of the regional representative group (s29), but we wonder how, in practice, the interests of small supplies' consumers will be protected. For example, the village of Rāhotu in South Taranaki (population approximately 180 people and no significant growth) versus Hamilton (2018 Census population 160, 911 and high growth).

*Note: the stated population of the Western-Central Entity is 799,610 people, but the combined 2018 Census population (the Bill says the latest Census figures are to be used) of the 22 authorities that would comprise the Western-Central Entity is 957,108.*

## **Proposed Structure**

The draft Bill proposes that each entity will have a regional representative group, a governance board and, optionally, one or more regional advisory panels. This is an extraordinarily complex structure that does not provide clear opportunities for local decision-making, nor understanding and prioritisation of local work programmes to the levels that currently exist. This means that, at a local level, the Bill proposes a more perverse outcome than the existing structure.

STDC does not support the proposed governance structure in the Bill and instead supports the structure proposed by C4LD. The C4LD proposed structure is a workable solution that meets the outcomes the Government is trying to achieve, and also those of local communities.

S113 states that the powers and functions of an entity are not affected by any vacancy in its regional representative group or advisory panel and vice versa. We note that there is no stated limit on the number of vacancies, which has implications for how these bodies would operate. There is no reference to quorums, so they could potentially operate with a small number of members and therefore make decisions that are not representative.

As noted above there are still unanswered questions and likely to be unintended consequences from this Bill, including what would happen if one or more councils or regions wants a 'local' advisory panel, but the regional representative group does not. We are concerned as to how and when issues such as this will be addressed, as, despite their importance, they are not currently covered by the Bill.

## **Contracting Out**

S117 states that an entity may enter into a contract for any aspect of its operation for up to 35 years. If the intention of the entities is to create a competitive market and obtain the best price for the end user, we wonder how a contract of this term would achieve these objectives. We suggest that there must be clear opportunities for regular contract review to ensure cost-effective service delivery for our communities.

S117(2)(b) states that an entity must maintain ownership of the infrastructure and assets, and yet s116(2)(c) says an entity can lose control of, sell or otherwise dispose of significant infrastructure in accordance with Schedule 4, provided it retains its power to perform its duties. Further, s118 provides for joint ventures and s118(d)(i) and (ii) allow the sale or transfer of infrastructure.

These provisions seem to be contradictory and negate the assurances that community asset ownership will be preserved.

STDC does not agree with any of its community's infrastructure assets being sold or otherwise disposed of, nor does it consider any loss of control of assets to be acceptable. Under the proposed structure the community's most precious resource may more easily be sold or disposed of, and this is of great concern to STDC and our community. The movement of assets to the proposed entities, coupled with the Bill, removes key protections that are currently embedded in local ownership.

## **Employment & Resourcing**

S119 requires an entity board to appoint a chief executive, but the Bill appears to be silent on the employment of other staff. We assume that this is the same arrangement as currently exists for local authorities, with the other staff being employed by the chief executive. We believe that this needs to be made clear in the Bill.

S2(b) of Schedule 1 of the Bill states that s12 "must be read as if the function in paragraph (a) of that section were to ensure that, by the establishment date, the water services entity will have sufficient capacity and capability to provide safe, reliable, and efficient water services in its area."

S2(b) also suggests that the Government understands this may not be achievable, in which case, how does the entity carry out its functions and responsibilities? The Water Industry Commission for Scotland's final report dated May 2021 said that Scotland faced planning and operational capacity issues and supply chain issues after its reforms were put in place, and that was long before the current supply chain issues we are experiencing such as those caused by COVID-19 and global issues.

As we highlighted at the beginning of this submission, the WICS report predicts it may take until 2050 for New Zealand to match Scottish Water's performance. Under our own Long Term Plan, STDC would have achieved the infrastructure outcomes that the Government is seeking, well before 2050. Again we highlight that we do not see the value in the proposed reforms.

S15 of Schedule 1 requires the chief executive of the department to review the positions of existing employees during the establishment period and determine whether an employee undertakes functions that will be transferred to an entity or has a senior management role. This suggests that the commitment made by the Government to transfer all water-related roles to the new entity may not be honoured. This aspect needs to be made much clearer to provide certainty for existing water staff.

### **Planning and Oversight**

STDC notes the considerable amount of planning and documentation required under the Bill, and we wonder where the resources will be found to successfully fulfil these requirements. The Bill includes the following documents that entities will be required to prepare and review, and work to (not necessarily a complete list):

- Statement of intent
- Statement of strategic and performance expectations
- Constitution
- Asset management plan
- Funding and pricing plan
- Infrastructure strategy
- Annual report
- Consumer engagement stocktake
- Interest registers
- Forum guidance documents
- Responses to Te Mana o te Wai statements
- Board appointment and remuneration policy

It is difficult to escape the impression that the controversy over Three Waters to date has caused the Government to over-regulate by putting in place an inordinate number of checks and balances. The layers of bureaucracy, oversight and documentation are significant and could contribute to the proposed changes being more expensive and less effective than the status quo.

### **Entity Engagement**

S203 requires the chief executive of an entity to establish a consumer forum and produce a guidance document for the forum. Like many other aspects of the Bill, we have concerns about how this would work in practice. We have the following questions and comments:

- Would there generally be one forum for a whole entity area?
- Would there be one forum for each class of consumer – residential, commercial/industrial, rural?
- Would there be one forum for each local authority area, or a region or some other grouping that recognises communities of interest?

- Would there be one forum for cities and another for provincial areas?
- What would happen to the feedback from the forum(s)?
- Would forum members be paid to attend meetings? Meeting and mileage allowances? Childcare allowances?

The Bill provides for all of these forum options, which means there could be several consumer forums in one entity area, each having a guidance document and being engaged with and administered. The administration requirements alone could be considerable – meeting management, appointments/elections and so on.

There is the possibility that an entity could set up one forum for its whole area and say it complies with the legislation, even though it is not appropriately representative and is practicably unworkable.

### **Divestment Proposals**

Schedule 4 indicates that one of the Council's greatest fears, the future privatisation of three waters assets, could become a reality at some time in the future. We have already communicated our concern that, no matter how many safeguards the Government puts in place, once the assets are in the hands of a new entity the path to privatisation *will* be made easier for any future Government.

We acknowledge that the requirement for territorial authority 'owners' to unanimously agree to put a divestment proposal to a poll strengthens the safeguards but we are rightly hesitant in trusting that this will be enough to protect our communities' interests in the future. Following the passing of the Bill, any future Government can simply legislate to completely remove local ownership and the debt to revenue ratio of 800% means that the entities are likely to become highly indebted, making them attractive for sale or for any investment. Our community is clear that this is an unacceptable outcome and based on this and the many points in our submission, we oppose the Bill and support the C4LD approach to better quality water outcomes for our communities.

We understand that the Select Committee may be planning to undertake a 'road show' around the regions, to hear submissions. If that occurs, STDC requests an opportunity to speak to the Select Committee in support of this written submission.

Ngā mihi nui



Mayor Phil Nixon

**South Taranaki District Council**  
**Te Kaunihera o Taranaki Ki Te Tonga**