

**Submission of Thames-Coromandel District Council
to the
Finance and Expenditure Select Committee
regarding the
*Water Services Legislation Bill***

Date:	09 February 2023
Submission:	On behalf of an organisation
Oral submission to the Committee:	No
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Executive summary

The Thames Coromandel District Council (“The Council”) is a territorial local authority in the Waikato region. The Council provides a wide range of essential services including three waters, to both residents and visitors. The Council is made up of a mayor and eight Councillors, all of whom are elected members. The management of the organisation is led by the Chief Executive who reports to The Council. The district has a population of approximately 27,625 and 21,181 are on Council water supplies. Those on Council water supplies pay for the water services they receive, through both rates and water by meter charges.

General position

The Council appreciates the opportunity to make a submission on the Water Services Legislation Bill 2020 (“the Bill”).

Council is not supportive of the water reform in its current form as proposed by the central government.

On 07 April 2022, Council passed a resolution supporting the operating model proposed by Communities 4 Local Democracy (C4LD) and is a signatory their (C4LD) Memorandum of Understanding, along with several other territorial local authorities.

Communities 4 Local Democracy He hapori mo te Manapori is a new local government action group committed to working with central government to ensure all New Zealanders have access to safe drinking water and that all of our local communities continue to have a say on the use of assets purchased on their behalf using ratepayer funds.

Submission

1. General comments

- 1.1 Make provision in the legislation to no cut-off water and wastewater services for non-payment of bills, to ensure health and safety of residents in a household with special medical needs such as **dialysis patients**.
- 1.2 Make provision for transfer of **energy contracts** for all water services.
- 1.3 Make provision for market comparable **rental agreements** between the Entities and Council for occupancy of Council properties by the Entities.
- 1.4 Make a **funding provision** for Council to engage a separate team of staff to carry out the transition tasks referred to in this legislation. It is not practical to carry out this transition work by the same Council staff who have their normal day to responsibilities of continuing to deliver Council services.
- 1.5 Use one consistent terminology to refer to a Council i.e., Territorial Local Authority, Local Authority or Council.
- 1.6 Prepare and publish 10 year long term capital and operational plans water, wastewater, and stormwater, and review in three-year cycles.
- 1.7 WSE refers to the Water Service Entity.
- 1.8 TLA, LA, or Council refers to Territorial Local Authority.

2. Specific comments on the legislation

Part 1 – Amendments to Water Services Entities Act 2022

- Clause 13 – Functions of water services entities, Items (b) and (j)

Item (b)

In addition to owning and operating water services, the entities must maintain the water services assets in good order and ensure safe disposal of these assets at the end of their useful life.

It is recommended that Clause 13 (b) be amended to read as follows.

Recommendation

*13 (b) to own or operate **or maintain** water services infrastructure **and ensure safe disposal of these assets at the end of their useful life.***

Item (j)

To maximise benefits and minimise risks to the public and Entities, it is imperative that the Entities work collaboratively with other service providers. For example, to prevent a road being dug up twice or using a pipe excavation to lay other services at the same time.

It is recommended that Clause 13 (j) be amended to read as follows:

Recommendation

*13 (j) to collaborate with other agencies, **other infrastructure service providers, organisations, and individuals in the water services sector to maximise benefits and minimise risks to all parties including public.***

Part 6 – Provisions relating to water services infrastructure

Subpart 1 – Water service infrastructure on or under land

- **Clause 203 – Application to District Court to carry out work**

This clause as worded has the propensity to unduly delay construction projects because of going to the District Court just prior to construction. Given the Local Government Act does not apply to the Entities, it is recommended that an intermediate step to negotiate access with the landowner as early as possible be provided.

It is recommended that the following additional clause for **early notification** be included under Clause 201 (Notice required before carrying out work on or under land)

Recommendation

New clause – Early notification to private landowners - Unless the works are of an emergency nature, the Entity must notify landowners as early as possible regarding the Entity's intention to carry out work on private land and commence negotiations for access. Should these negotiations be unsuccessful, then the provisions of Clause 203 (2) may apply.

Subpart 2 – Water Services infrastructure on or under roads

- **Clause 211 – Power to carry out work in relation to water services infrastructure on or under roads**

To ensure fairness, it is important that the Entities, like all other infrastructure service providers, comply with the National Code of Practice for Utility Operator Access to Transport Corridors and any specific requirements of Road Controlling Authorities.

Therefore, it is recommended to add the following subclause 3 to Clause 211:

Recommendation

New clause - (3) In carrying out its duties, the Entity shall comply with the National Code of Practice for Utility Operator Access to Transport Corridors and any specific requirements of Road Controlling Authorities.

- **Clause 212 – Notice required before carrying out work on or under road**

Unless it is emergency works, it is better to provide notice to a Road Controlling Authority (RCA) at feasibility / concept design stage. This would help both the Entity and RCA to work in a collaborative manner, and for example avoid digging up a newly built road. This approach will maximise benefit and minimise risk to all parties.

It is recommended that the following new clause be inserted under this section:

Recommendation

New clause – For non-emergency works, the Entity must provide notice as early as possible, for example at project feasibility / concept stage, to Road Controlling Authorities and other infrastructure service providers and gain their input.

Subpart 4 – Further provisions relating to water services infrastructure – Compensation

- **Clause 219 – Protection of water services infrastructure**

Recommendation

Provide guidance on construction work above existing water services assets on private land. For example, something like a 'Build Over Policy'.

Subpart 5 - Appeals

- **Clause 226 – Appeals to the District Court**

Recommendation

Clarify who is responsible for delays to statutory application processing timeframes for a new development application made to Council under the Resource Management Act.

Part 8 – Transfer of small mixed-use rural water services

Under the proposed water reform, it is proposed that the new Entities will take over all Council water supplies.

Council owns and operates two small mixed-use rural water supplies in Thames south.

Clauses under the section (Part 8) state that after taking over from Council, the Entity may transfer the above rural supplies to an alternative operator.

It is unclear as to why the Entity wishes to take over these schemes from the current operator (Thames-Coromandel District Council) and then transfer them over to an alternative operator, and who will own and maintain the assets.

This transfer may also take away any legal protection and rights that these consumers currently enjoy as a Council customer.

Recommendation

Please clarify the rationale behind this approach, who will own these assets and what legal protection these consumers will have under the proposed Entity model.

Part 9 – Service provider and assessment obligations

Subpart 2 – Stormwater provisions

- **Clause 254 – Stormwater management plans and Clause 256 – Contents of stormwater management plans**

A stormwater management plan needs to include capital and operational activities that will be undertaken by the Entity to ensure compliance with resource consents such as a comprehensive stormwater discharge consent.

Recommendation

1. ***Add new Clause (c) to Clause 254 and new clause (i) to Clause 256 – A schedule of capital and operational activities to demonstrate resource consent compliance.***

Subpart 6 – Rules regulating specified classes of work

- **Clause 285 – Board may regulate specified classes of work in certain places**

Under the above clause, the WSE may make rules that regulate, restrict, or prohibit work near one of their networks.

This will create additional complexities and compliance issues for LA's when doing work across the district as they will need to consult with the WSE before commencing any project in the vicinity of the water network. There will be timing implications for projects and additional resource requirements to manage. There could also be a risk of prosecution if LAs fail to comply with the many rules and regulations that the WSE can enforce.

Recommendation

1. ***Add new Clause 5 to Clause 285 - The Entities and Councils shall establish enduring service level agreements to fast-track work undertaken by either party within a particular geographic area.***

Part 11 – Charging

Rates rebate scheme

The current understanding is that once the Entities take over all Council water supplies, they will also take over all associated billing, be it a volumetric charge, a uniform annual charge through rates or any other charging regime.

Clause 318 requires Councils to continue to calculate rates rebates for water fees and charges. The legislation does not state anything about who will receive the revenue, bear any financial losses due to these rebates, payment of any compensation to Council for doing this work and for how long.

WSE's required to give LA's all charging info from their records in order to calculate entitlements to rebates.

This creates another layer of complexity to processing rates rebates as Customer Services staff will need access to data held by the WSE.

The legislation requires sharing of rating information – LA's must give WSE's access to their RID (Rating Information Database) so that the WSE can charge its consumers.

There are a lot of unknowns how this will work, but it will require additional Council resources (cost and personnel) to set up and administer. It also raises issues around privacy of ratepayer information. If requested, LA's must provide information that has been removed from the RID.

The database is constantly updated with change of ownership, change in addresses for notification, properties subdivided etc, unclear how this will be managed. It may require a system modification, additional costs, and staff resources to Council.

Recommendation

Please clarify in detail the how proposed rates rebate scheme to be implemented through Councils will work in practice, and how Councils will be compensated for undertaking this work.

Pass-through Billing

- **Clause 336 – Chief Executive of water services entity may authorise local authorities to collect charges**

Clause 336 contains a provision to enable the CE of a WSE to authorise LA's in its service area to collect charges on behalf of the WSE, with a charges collection agreement in place. The agreement will expire on 30 June 2029 unless parties agree to extend the agreement. However, the legislation stipulates that LA's will not be responsible for collecting unpaid charges.

It is unclear what "charges" relates to – rates, DC's, fees, and charges for new connections etc? If it is all these things, then there will be no stranded overheads for support services with the loss of 3 waters as we will still need the staff to administer, and it is unclear whether our full costs of providing this service will be covered by the charges collection agreements. It will be at each CE's discretion whether they will want to use LA's for this service, creating uncertainty for staff.

Recommendation

Please clarify what the 'charges' relate to.

Water Infrastructure contribution charges

- **Clause 349 - When water service entity may invoice for water infrastructure contribution charges**

WSE's can charge water infrastructure contribution charges (basis is modelled off DC's in the LGA). LA's will be required to provide WSE's with building and resource consent data.

This creates added layer of complexity for applicants. Two scenarios are possible; one if WSE's administer contributions themselves the applicant will be dealing with two entities in relation to contributions and receive two bills as they will also be charged DC's from LA's for non-water infrastructure. Second scenario is if LA's collect DC's on behalf of WSE. This would be less confusing for applicants but would add additional costs for LA's to administer. It is not clear whether LA's will be required to hold off issuing 224c if water contribution charges aren't paid.

Recommendation

Please clarify the procedure for charging water infrastructure charges from applicants.

Part 12 – Compliance and enforcement

Subpart 4 – Offences

- Clause 415 – Wasting Drinking Water

Recommendation

Define 'Wasting'.

Part 13 – Miscellaneous provisions

Subpart 3 – Relationship agreements – Clauses 467 and 468

The above clause states that WSE's must enter into a relationship agreement with LA's, reviewed on a 5 yearly cycle. Agreement must step out how the data and information sharing will be managed. There will also need to be various SLAs underlying the relationship agreement. This will require additional Council resourcing to manage.

Recommendation

WSE to provide resourcing to TLA to develop and manage this relationship agreement

Subpart 5 – Information provisions – Clauses 471 and 472

These two clauses require a WSE to provide info to LAs for the purposes of issuing a LIM. This creates more complexity when creating a LIM. It is unclear who is responsible if the information provided is incorrect. Could impact timing of issuing LIMs having to rely on a third party for information.

Recommendation

Add new clause (4) under 471 – 'WSE takes ownership for the accuracy of data and information that it supplies.'

Schedule 14

- **Provisions relating to drainage works and drainage channels on roads and works not under the control of Council**

Recommendation

Check grammar in Clause 1, sentence 3. Shouldn't the word 'council' be 'Entity'

- **Clause 125 - Requirement to assess sanitary services**

Recommendation

1. Move Clause 4 (definitions of 'assessment' and 'sanitary') to the beginning of Section 125

Schedule 1 – New Part 2 – Provision relating to Water Services Legislation Act 2022

Clause 38 - Interpretation – ‘mixed use water services asset or property’ – sub clause (b)

The above definition excludes what constitutes ‘transport stormwater system’.

It is going to be difficult to determine the above as there is always cross over between transport and three waters – stormwater assets. While our asset registers identify stormwater and transportation assets separately, during a revaluation process we often identify stormwater assets that have been incorrectly classified as transportation assets and vice versa.

Recommendation

Please define what constitutes a ‘transport stormwater system’ and how the stormwater assets will be identified for the Entity transfer process.