

21 July 2022

Committee Secretariat  
Finance and Expenditure Committee  
Parliament Buildings  
Wellington

[fe@parliament.govt.nz](mailto:fe@parliament.govt.nz)

Dear Sir,

Thank you for providing the opportunity to make a submission on the Water Services Entities Bill.

This submission is on behalf of Mackenzie District Council. Council is the current owner of Three Waters assets on behalf of our respective communities. These assets have been bought and paid for by these communities over many generations. They are essential for the cultural, environmental, economic, and social wellbeing of our communities.

The communities wish to retain meaningful control and ownership over their water supplies. The Water Services Entities Bill (the Bill) strips our communities of this right.

**Council strongly opposes the four-entity model of reform proposed by this Bill and ask the Select Committee to recommend that it be withdrawn and significantly revised.**

In considering of three waters reform Council first decided on what was important to it and its community.

Five bottom lines for Mackenzie

We came up with five bottom lines and believes that all proposed options need to be measured against these criteria. These five bottom lines are;

1. Local representation voice: any future water entity developed through the process must enable both local and equal representation and Council must not lose its ability to influence and represent its community

2. full compliance is our priority; that full compliance with drinking water standards, environmental consents and cultural values is non-negotiable and should be progressed with urgency no matter what organisational arrangements is adopted, including the status quo
3. control on the price of water; pricing structures and controls on pricing must ensure equity across the entire region of any future entity
4. transition of assets and debt; the transfer of asset and debt must not negatively impact on Council's ability to be a viable organisation (i.e. is not reform by stealth)
5. cost and management of assets; cost and management of any stranded assets must be considered and accounted for, alongside central government speeding up the process and identifying what might "fill the gap" left by waters.

Council believes achieving compliance is important and have undertaken major upgrades to achieve this.

We have significant investment planned on 3 waters to achieve ongoing compliance. Assumptions in WICS model did not hold true for Mackenzie and we believe in a significant number of other situations for communities across New Zealand. One share in Entity D is not adequate to guarantee an adequate voice for our communities in a large entity to influence capital investment. The ongoing affordability of water to our communities remains a concern. A sub regional model would achieve as good if not better economies and provide greater voice for small Councils.

Council finds the Bill is contrary to most of these bottom lines plus is also contrary to the basic property rights, the rights of local communities to have say over their local services and will lead to poorer outcomes for communities.

**Council has proven that the underlying foundation supporting a 4 entities model is significantly flawed and the economics do not align with actual and proven costs and revenue.**

**There is no doubt in Council that Central Government prematurely decided that a mega-model was the solution to the problem and forged ahead despite Councils being in vehement disagreement. It would appear that the evidence has been massaged to fit the model proposed by central government. We have undertaken independent analysis (see attached analysis) which shows the assumptions on which the model is based is flawed for Mackenzie.**

**There are many credible alternatives models that deserve analysis and Council believes will deliver far better holistic outcomes to local and central government, mana whenua and our communities.**

The underlying issues that have led to the current state of New Zealand's 3 waters infrastructure stem from outdated regulation, poor auditing and central government failing to give local government the funding tools needed to provide it with a stable funding platform to deliver its core roles and responsibilities. Provision of government grants directly to Councils to incentivise infrastructure development would have been a more economical and effective solution. The proof of this is evidenced by the recent DIA Tranche 1 funding which has leads to significant upgrades right cross the motu. The flaws in the current funding model have been well documented over time

through various enquiries, such as the Shand report and the Productivity Commissioners report, none of which central government chose to act on.

Council has the following major concerns about the Bill in front of the select committee.

**Model of ownership is a Claytons model:**

Section 166 of the Bill clearly eliminates any rights of Council re any normal definition of ownership.

The model of ownership proposed in the Bill falls well below any acceptable definition of ownership giving Council at best “very limited oversight on behalf of the community.

**The ownership model is an absolute Clayton’s model. A Claytons proposal that territorial authorities “own” the water entities, but this is ownership in name only, not in substance. Councils will not be able to perform any of the functions of ownership like with any other asset. The shares would have no voting rights, no financial rights, and no rights of appointment. They are trying to con the public into thinking that territorial authorities will still have ownership, when all they’ll have is a piece of paper with no rights of ownership.**

**Flawed assumptions led to the development of a flawed model and the case for change has not been conclusively proven:**

The case for 4 entities is not proven and the assumptions are fundamentally flawed as shown by our independent analysis and that of the Communities for democracy submission (Castellia report).

The economic modelling was seriously flawed by using different figures for the status quo and the 4 entities cases, injecting unrealistic savings due to scale, and transferring debt to future generations who will never be able to afford repayment.

The debt caps on the entities are used to generate a fake reality for the new entities and so such highly geared entities will not survive as interest rates change back to those we normally experience in New Zealand. Councils were never granted any such latitude to upgrade facilities and even a marginal change in the gearing ratios for Councils would have allowed Council’s to borrow more for critical upgrades. The playing fields are not equal.

**Economic Regulator and other legislation being done in piecemeal fashion**

Council supports the establishment of Taumata Arowai and requests that central government proceed with haste to establish the economic regulator which appears to have fallen into a black hole.

This regulation will add transparency and accountability which will go a long way in resolving the issues. Viewing the legislation in piecemeal fashion is not helpful. Economic regulation and consumer protection are important legislation.

**Small Communities will not be able to effectively engage with the proposed large, bureaucratic and complex entities and thus will receive second rate services.**

Small communities have already been constrained socially, culturally, and economically by large infrastructure entities. Two examples that immediately come to mind is the constrained electricity network to some of our communities that constrains growth and the very slow roll out of broadband to our rural townships and when it comes it does only the central area of towns and in some cases not even rolling out to the industrial areas. Council sees the large entities being promoted by this Bill will further stifle development of these small communities across rural New Zealand who collectively make a significant economic, cultural, and social contribution to New Zealand Inc.

### **Unwillingness to change the current unsustainable funding model for local government which inhibits investment in Infrastructure:**

Current funding model not sustainable to deliver required large scale infrastructure upgrades  
There is no denying some councils have neglected their responsibilities to maintain core service infrastructure, like water supplies. The Local Government Act 2002 expanded the role of local councils from a restrictive core-services mandate to a mandate to meet the four community well-beings: economic, social, cultural, and environmental but failed to give the Councils the funding tools to deliver this wider mandate. This opened the need to fund a wide range of services essential for today's society.

Councils have been provided with ongoing unfunded mandates (e.g. freedom camping and provision of tourism infrastructure, additional compliance in building and water standards) with the same blunt funding mechanism. This does not seem to be equitable. For small Councils with limited ratepayer bases the provision of three waters infrastructure to meet peak visitor demand is not sustainable given the current funding mechanism.

### **Alternative models that should be considered**

**The solution to New Zealand's water infrastructural issues is better access to infrastructure** finance for sub-regional water entities, which would deliver economies of scale and community connection.

Two models that could deliver this would be one based on southern canterbury or a combined Canterbury/West Coast entity that excludes Christchurch, Waimakariri and Selwyn. This could include representation at a governance level of local Rūnanga.

Another funding option is for central government to co-fund water projects, as they do roading projects that meet a Benefit: Cost (BC) threshold. That funding mechanism could also undertake a dual monitoring role to not only ensure sub-regional water entities are adequately maintaining their core infrastructure, but to impose that discipline on those that aren't.

Other concerns with the Bill are:

- **Communities have not been consulted** over the proposed confiscation of ratepayer funded infrastructure and services and this represents a significant change for these ratepayers who have contributed to the development and investment in these assets.

- The Bill offers **demonstrably poorer outcomes** on a range of measures including accountability to customers, iwi-Maori partnerships, management and operational performance and flexibility for the future.
- **Loss of voice or influence:** Any real local influence over services will be effectively lost as a 1 share of 1 for a population of 50000 in a large entity. It does not give these Councils adequate voice and influence to be able to effectively advocate for infrastructural investment.
- This bill does **not have cross party support** and will not offer the level of certainty needed for long term infrastructure investments.
- **Protections against privatisation are weak and easily undermined.**
- **Governance arrangements are overly complex and effectively generate layers of governance that have little or no benefits.** These added layers will add cost but cannot guarantee outcomes for small Councils with only 1 vote.

The extra layer of bureaucracy with sub-regional groups within each region so the miniscule influence of ratepayers (who will have to pay the compulsory charges) will be ratepayers to councils to sub-regional groups to regional groups to appointment panel to the board of the water entity.

- **Asset Management** needs to be at such a level that each community can understand what has been allocated to their schemes, how their scheme is performing, the true costs associated with their scheme, specific allowance made for growth and renewal plus the levels of service applicable to their community.
- **Financial transitional arrangements need to be provided** on transfer details such as debt, asset value, commitment to existing capital programmes, commitment to levels of service and the communication of progress. There is no clarity of what guaranteed funding will be provided to Councils to extinguish current debt associated with the three waters.
- **Water, wastewater, and stormwater are vital community lifelines** and therefore details regarding commitment to response and action during adverse and/or civil defence events needs to be detailed. There needs to be clarification of roles and responsibilities and accountabilities in such circumstances.
- **A clear definition of wastewater and stormwater needs to be included so there is a clear demarcation of what is in control of any new entity and what remains with Council and/or the private property owner**
- The legislation fails to recognise the close connection that the three waters services have on many other activities of Council particularly placemaking and wellbeing. Three Waters is also critical for economic growth and wellbeing in civil defence emergencies. The removal of this service to such a remote entity will add to the stifling of rural New Zealand.

- **Clear definition of how any new entity will access contributions for growth** needs to be incorporated
- **Bylaw/service agreement powers** need to be spelt out in the bill
- **Shares need to be based on either properties served or peak populations** as the infrastructure that will be transferred is designed to serve peak populations and all properties irrelevant of normal population.
- **Regional advisory groups need to be mandated and their powers clearly spelt out**
- The initial **constitution of the Water Entities** needs to be incorporated into the Bill and not set by later regulation
- **Accountability to communities**  
Entities should be required to report back at a public meeting to communities at least annually at a place that is easily accessible to consumers, i.e. within 30 minutes' drive of each supply or scheme. It is not clear what the performance targets and measures will be that these entities will be measured against and how these will compare to those set by individual communities now.
- What **process** such as the Local Government Annual Plan and Long-term Plan process will be put in place to **give communities the ability to make submission** on proposed capital programmes and affordability of water provision.
- **Employees transferred** need to have their conditions protected for a minimum period of 24 months from transfer including location and position without mutual agreement.

Moving forward in true partnership Council; believes central government should push the reset button and enter into true non preconceived consultation with New Zealand's communities, mana whenua and local government based on the following principles.

- Foundation principle - community property rights in Three Waters assets are to be both respected and meaningful.
- The Government should agree to amend its current reform process and allow time for the revised approach to be reflected in draft legislation.
- With respect to investment decision-making, asset owners should actively seek to initiate authentic discussions with mana whenua at a local level that consider co-design and partnership arrangements that acknowledge and enable Te Tiriti based pathways at a local and sub-regional level.
- In return, asset owners agree to commit to meeting health, economic and environmental standards, once known, within an appropriate time frame.

- The regulatory framework should specify a “backstop” provision that identifies a set of circumstances which would justify future Crown intervention if an asset owner was not making acceptable progress towards meeting those regulatory requirements.
- Progress should be reported on annually by asset owners and be benchmarked across the sector.
- To further incentivise sector progress, a formal process should be established that requires an asset owner to prepare a plan that would map out the steps it proposes to take to meet the required standards in a financially viable and sustainable manner.
- A process to finance and allocate funds to areas that will require financial assistance be designed that is national in application and independently administered accordingly to objective and transparent criteria (this is consistent with the recommendation of the Productivity Commission in November 2019).
- This financing scheme will be designed to meet deferred investment shortfalls until such time as sufficient progress has been made. At which point the scheme will either cease and asset owners will finance matters on a business-as-usual approach or will be redirected to other priorities.
- A sector-wide best-practice improvement process be created, and membership made compulsory. (In similar manner used to implement successfully the One Network Road Classification Framework and now One Network Framework in the road infrastructure area and governed by Waka Kotahi and the Local Government Sector.)

**Council fully supports the submission made by Communities 4 Local Democracy, He hapori mo te Manapori, and ask for the Select Committee to give proper consideration of their alternative model for reform that protects these rights, while delivering all of the stated outcomes of government. Council is a member of Communities 4 Local Democracy.**

In conclusion Council believes the Bill is poor legislation. In particular:

- It expropriates, without compensation, community assets contrary to all principles of law.
- It is widely opposed by communities across New Zealand because it removes local voice in favour of a centralised approach contrary to all principles of localism.
- It is based on data and analysis that is incorrect or, at best, seriously flawed.
- In an asset class that requires regulatory certainty to achieve investment certainty, it has failed to achieve bipartisan support across political parties meaning it will not deliver a durable and sustainable basis for reform; and
- Alternative approaches to reform could achieve a more durable outcome to the long-term benefit of the country.

This Bill is not in the best interests of New Zealand and Council ask the Select Committee to recommend the Bill be withdrawn to enable Government to work with local government to co-design a more effective model of reform with better outcomes for the whole community.

**A delegation of Council would like to be heard in support of this submission.**

Thank you for the opportunity to oppose the Water Services Entities Bill.

Yours sincerely,



**Graham Smith**  
Mayor, Mackenzie District Council