FROM THE
OFFICE OF THE MAYOR

RANGITĪKEI
DISTRICT COUNCIL

20 July 2022

SUBMISSION TO THE WATER SERVICES ENTITIES BILL

Introduction

Rangitīkei District Council appreciates the opportunity to make a submission on the Water Services Entities Bill. We are aware that nearly nine months have elapsed since we made the Minister of Local Government aware of the Council's views and those of our community. We are glad that there has been a real engagement with the local government sector on several particularly crucial aspects of the proposed reform (which we shall comment on later). On the other hand, we are disappointed that the whole legislative framework has not been prepared which means that there continues to be uncertainty over what will be significant detail in how the new entities will operate.

In our earlier letter to the Minister, we noted our understanding of and support for change to how the three waters are managed, and that we generally accepted that the Government's evidence for change is directionally correct. What we noted then was the range of views about the levels of benefit which can be achieved through aggregation and the concern within the communities about the lack of engagement with them about the reforms. As a background to that letter, Council undertook an online survey of people in the Rangitikei. The vast majority of survey respondents, including feedback directly to Elected Members, had no confidence in the reforms and were opposed. We have not undertaken a further survey but have encouraged local residents and organisations to express their view directly to the Committee.

Like other territorial authorities, Rangitīkei District Council has substantial assets in the three waters: an external assessment deemed them to have a fair value of just under $109 million as at 30 June 2019. They include three rural water schemes, one of which is also the source of drinking water for the township of Hunterville.

Ownership

We are pleased to see that the question of possible privatisation has been addressed by the introduction of shareholding for local authorities, with the requirement for unanimous consent of each shareholding local authority to advance a proposal to privatise. However, this provision could be changed in a future Parliament.

We <u>suggest</u> that the protections in the Bill are 'entrenched' by Parliament.

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We wonder whether there is merit in requiring each entity to call an annual shareholders' meeting. This could provide a further opportunity for a community voice. If so, it could be done through an addition to clause 91.

Governance

We expressed our concern to the Minister that the size of the proposed Entity B (now the Western-Central Entity) was 'at odds with enabling local influence from the range of disparate communities' across the entity.
We further note that the Bill establishes a two-tier governance structure –

- strategic (regional representative groups and regional advisory panels)
- operational – independent, skills-based boards

However, the Bill's approach to outlining this structure is made complex by having a separate specification (in Part 2, Subpart 7) **Constitutions** in addition to the earlier subparts for the regional representative groups, regional advisory panels and the entity boards.

The key part for us of the proposed structure is the regional representative group, with equal representation from territorial authorities and mana whenua within the entity boundaries. We are pleased that the recommendations from the Working Group on Representation, Governance and Accountability have been accepted, in particular –

a. the regional representative groups now determine the composition of the Board Appointments Committee, with the power to appoint and remove Board members and set relevant policy (clauses 38-40)
b. the regional representative groups must now give approval for key documents such as the funding and pricing plan and the infrastructure strategy (clause 28)
c. the addition of regional advisory panels (clause 45)

We suggest that clause 27 is extended so that the regional representatives are broadly representative of the different mix of metropolitan, provincial and rural territorial authorities within each region.

Given the significance of the regional representative groups for local voice and accountability, we question why it is entirely the decision of the chief executive to determine the nature of the customer forum.

We suggest that clause 203 **Customer forum** is amended, by adding
(6) The chief executive must consult with and gain agreement from the regional representative group on the number of consumer forums, the class of consumers to be involved and the guidance document to be provided to each forum.

Likewise, we think the chief executive should engage directly with the regional representative group on the customer engagement stocktake

We suggest that clause 204 **Customer engagement stocktake** is amended by adding
(3) *The chief executive must present the customer stocktake to the regional representative group as soon as practicable after it is issued and, following that publish* a copy on an Internet site maintained by or on behalf of the entity in a format that is readily accessible.

We disagree with the Bill's proposal that the regional representative groups (and regional advisory panels) will not come into effect during the establishment period. We elaborate on this later in our submission when we discuss the Bill's transitional provisions.

Council considers this addition of the regional advisory panels will go some way to ensuring a local voice and local accountability – both for territorial authorities as well as mana whenua. However, while the procedures for the regional advisory panel are included in the specification for the constitution for each entity, the establishment of such panels is not mandatory. We think this is a misreading of Recommendation 25 from the Working Group on Representation, Governance and Accountability, and is a mistake which needs to be corrected. Such panels need to be seen as the way in which local communities can have a voice on what they see as the local priorities – and critical linkages to other local projects, such as roading and housing development.

We suggest that clause 45(1) is amended: The constitution of a water service entity ~~may~~ **must** establish 1 or more regional advisory panels.

We think it should be mandatory for each entity to allow its constituent territorial authorities to discuss what regional advisory panels should be put in place. Part of this consideration is gaining the views of mana whenua: one way of ensuring this is to have territorial authorities discuss it with their iwi and hapū, but a parallel process with mana whenua could also be used. The decision would be made by the regional representative group as specified in clause 30.

We suggest that the Bill includes an additional clause 91 (ea) **Establishing regional advisory panels**: *Each water services entity (through its regional representative group) must consult with all of its constituent territorial authorities requesting their view on what would be appropriate geographic areas for each regional advisory panel to cover, taking into account their individual discussions with iwi and hapū with whom they relate.*

However, clause 47 notes only the collective duty of regional panel members, which might be seen as restricting the intent of establishing such panels.

We suggest that a further clause 47A is inserted **Individual duties of regional advisory panel members***: Each member of a regional advisory panel is expected to be knowledgeable about their local community and be an advocate for it*.

We agree with the requirement (clause 114) to provide funding and relevant information for the regional representative groups and regional advisory panels.

We support the emphasis on consensus decision-making for both the regional advisory panels and the regional representative groups. We consider that this is the most effective mechanism for considering the range of needs and priorities across each region, but agree with the provision (clause 43) regarding dispute resolution – in particular that the costs are not to be met by the represented territorial authority or mana whenua.

We note that clause 61 of the Bill provides that parts 1-6 only of the Local Government Official Information and Meetings Act applies to the entities. This means that Part 7 (covering local authority meetings) does not apply to the entities. This would mean agendas, order papers and minutes would not be available to the public (apart from the limited opportunities provided by clause 60).

We suggest that Part 7 of the Local Government Official Information and Meetings Act should apply – as an assurance for transparency in decision-making and to align with the entities being 'local authorities' in terms of the Public Records Act 2005. With that change, there is no need to specify a minimum number of 'public meetings' to be held by the Board as provided in clause 60.

Local influence

In our earlier letter we looked for clarification on the opportunities for local influence and planning integration. We note that the objectives for the entities (clause 11) include protecting and promoting public health and the environment and supporting an enabling housing and urban development and that the operating principles (clause 13) include 'partnering and engaging early and meaningfully with territorial authorities and their communities'. This is referenced in clause 73: The board of a water services entity must ensure that the entity acts in a manner consistent with its objectives, functions, operating principles, and current statement of intent.

We accept that this first Bill cannot readily anticipate other planned reforms (particularly those associated with the Resource Management Act). However, we think there are important linkages which could be included.

We suggest that it would be practical to include -

In clause 11
promote community well-being in the localities served by each entity
in clause 13
having regard for statutory planning requirements on territorial authorities (including their long-term plans)
having an obligation to consider ways in which the entities can foster development of Māori capacity to contribute to the governance and decision-making of the entity.

As a transitional arrangement, we suggest that the initial three years of the investment plans for each entity is required to take into account the investment planning for the three waters documented in the 2021-31 long-term plans of each territorial authority.

We understand that subsequent legislation will address in detail the methodology of debt and asset identification and transfer. We note that a significant aspect in this is making available to each entity copies of the relevant records (including rating records), some of which will now be held in archives repositories. Clause 222 amends the Public Records Act 2005 so that water services entities are deemed local authorities under that Act.

Government influence

While clause 115 guarantees the independence of the water services entities (and their boards), we note that Part 4 of the Bill allows the Government to choose to exercise a degree of control over the water services entities through a Government Policy Statement on Water Services (part 4). Clause 132 requires the water services entities "to give effect" to such a Statement – which looks very close to providing a direction to the entities, and thus qualifying their statutory independence. However, just as there could be cause for formal monitoring and intervention (as specified in part 5), we accept that there could be a national perspective which may need to be reflected. However, we think the consultation requirements (in clause 131) are insufficient:

We suggest that clause 131 includes a specific engagement with Māori and a requirement to publicly release a draft Statement so that there is a wider opportunity to give feedback. It would be reasonable for the Minister, in making such a Statement, to be required clarify how water services entities are to be supported in giving effect to the Statement.

Funding and pricing plan

We are disappointed by the Bill's provision (clause 150-152 and part 3 of Schedule 3) on the funding and pricing plans to be developed by each entity. While there is clarity on engagement with territorial authorities and consumers, there is no mention of affordability or the earlier discussions of price harmonisation or cross-subsidisation of smaller/rural localities by larger/urban centres. This was one of the specific concerns raised in our earlier letter to the Minister. Earlier publicity from the Department of Internal Affairs about the reform proposals was specific about both improved levels of service and more affordable household bills. We understand from the Discussion Paper from the Ministry of Business, Innovation and Employment, *Economic Regulation and Consumer Protection for Three Waters Services in New Zealand* (October 2021), pp.31-32, that independent price-quality regulation is likely, but not feasible before 1 July 2027 meaning that some transitional arrangement is needed. To avoid clashing with the statutory independence of the entity boards, it would seem preferable to provide for that arrangement in the Bill.

We suggest that Internal Affairs is asked to provide the Committee with updated ranges of lowest and highest average household bills on the basis of the four entities being established. Calculations circulated last year based on the analysis by the Water Industry of Scotland suggested this would be between $800 and $1600 in 2051, meaning that it would be lower than that when the entities become operational. We think that these ranges should be included as part of the transition arrangements so that communities are clear what the pricing structure will be from 1 July 2024.

Transition

We are extremely concerned that clause 3 of Schedule 1 authorises the Minister to appoint the establishment boards for the entities, boards which could legally remain operational until 1 July 2024. We believe that it is critical that the regional representative groups are established *first*, before the entity boards are appointed, allowing the Bill's provision (in clause 38) for regional representative groups to appoint their board appointments committees.

Council is not privy to the Department's thinking about when the establishment boards would need to be operational but, given that the territorial authorities and mana whenua are already known, we see no reason why the groups could not be in place within three months of the Bill being enacted, so that the first boards for the entities could be operational by 1 July 2023 together with the constitutions be in place. This means the concept of 'establishment boards' would become redundant.

We believe that the first chief executives should be appointed by the initial entity boards, not the Minister.

We suggest that the Committee request clarification from the Department of Internal Affairs how much sooner than 1 July 2014 do the initial boards for the entities need to be established.

We suggest that
Clause 2 **Commencement** be amended
(b) subparts 1 to 8 of Part 2. [i.e. so that parts 5, 6 and 7 come into force the date of royal assent]
Schedule 1 **Transitional provisions**
Delete
Clause 3 **Establishment board of water services entity**
Clause 4 **Appointment of establishment chief executive**
Clause 6 **Role of Minister during Establishment period**

We note the requirement (Schedule 1, clause 5) for the Council to provide information to facilitate the reform, and accept that this is a continuation of the process to date. However, we question the requirement (Schedule 1, clause 11) to comply with any reasonable request to second employees to the entity.

We suggest that the requirement in Schedule 1, clause 11 regarding secondment of employees to the entity is qualified by 'provided that the local government organisation retains sufficient capacity to meet its level of service undertakings with its community'

We think Schedule 1 clause 14 is helpful in clarifying the interrelationship of the reforms with certain provisions of the Local Government Act 2002.

We are pleased to see that Schedule 1 includes (clause 16) a specific requirement to offer an employment position to those employees (not performing a senior management role) who will carry out a similar role in the new entity, and that this will be regarded as continuous service with the new entity. However, this does not provide certainty that the provision of service in any locality will be preserved, and we wonder whether that issue will be addressed in subsequent legislation.

However, we are disappointed to see clauses 21, 22 and 23 in Schedule 1 which require local government organisations to advise the Department of Internal Affairs about an intended decision which relates to or may affect the provision of water services. This is an extremely 'low-trust' stance, surprising given the MoU that is in place with Local Government New Zealand. This would be a far better, and more efficient, place to agree on protocols for decision-making by local government organisations.

We suggest that clauses 21, 22 and 23 of Schedule 1 are deleted from the Bill and that the Department of Internal Affairs is directed to discuss decision-making protocols during the establishment period with Local Government New Zealand and modify the MoU between the two bodies accordingly.

TO THE SELECT COMMITTEE:

The Rangitīkei District Council has taken considerable care to understand and reply to the specific parts of the Bill suggesting changes, as is required.

That may lead to the impression that we are in favour of the Bill. That is not the case. Our Council strongly rejects the Bill. We believe it is rushed legislation that has not been carefully thought through with very little attempt to seek regional solutions. We do not support the governance structures in their present form. Local influence and transparency is not evident or guaranteed within the Bill. For example, the Bill was built on the promise of cross-subsidisation without any supporting information. It is not acceptable to establish these powers without full information or by just saying that the regulator will ensure things later.

We strongly urge the Government to pause and develop the legislation in conjunction with our communities. I repeat, our Council opposes the Bill in its current form.

I would like an opportunity to talk with the Committee.

Mayor Andy Watson
on behalf of Rangitīkei District Council