

21 July 2022

Submission on Water Services Entities Bill

To the Finance and Expenditure Committee

This submission is from:

Carterton District Council

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We wish to appear before the committee to speak to our submission.

Introduction

Carterton District Council (CDC) supports the intent of the Water Services Entity (WSE) Bill to improve the way New Zealand provides safe, reliable, and efficient water services for our communities.

CDC staff have been co-operating and contributing to National Transition Unit (NTU) workstreams, Local Transition Teams (LTT), Wellington Region, and Entity C (now Eastern Central WSE) groups and discussion forums.

CDC continues to seek the best outcome for our transitioning employees, while ensuring continuous delivery of three waters services to our community during the WSE establishment period, and beyond.

GENERAL COMMENTS ON THE WSE BILL (THE BILL)

In our submission we draw the committee's attention the following risks to CDC, our community, and the new Eastern Central WSE:

1. Employee Retention During the Establishment Period.

CDC provides three waters services to its community through a skilled inhouse Infrastructure services team. The roles our water operations staff undertake and form an essential part of the levels of service we deliver.

Loosing key staff to the NTU or private sector supporting the NTU during the establishment period will be detrimental in maintaining our levels of service to our communities. The loss of just two or three key staff could result in our operational capacity collapsing.

Extended staff vacancies or NTU secondments will also result in lower levels of service for our community, which is clearly contrary to the intent of the Three Waters Reforms. Employee retention in Councils during the establishment of WSE's is critical to their ongoing success post transition.

We strongly encourage the Government to support Councils in retaining key staff during this transition period by instructing the NTU to not actively recruit or second staff from Local Government Organisations (LGOs).

2. Transition Engagement.

Council express serious concern regarding the NTU engagement across the Eastern-Central WSE area. NTU workstream messaging is mixed and at times contradictory, depending on which meeting or NTU personnel attend.

The current NTU engagement model is not welcoming of feedback or questions, including at the CEO level. Poor engagement at all levels of the NTU workstreams (but especially at the CEO level) significantly increases the risk of a deficient transition. This will result in inconsistent service levels across the motu, and sub-standard outcomes for our staff and communities.

Council strongly recommend Government reset the NTU engagement model to task partnership steering groups - jointly staffed by senior NTU and Council CEO's - with the responsibility of ensuring the successful transition of three waters services to the new WSE's by 1st July 2024.

3. Governance and Local Representation.

CDC are encouraged the majority of recommendations from the Working Group on Representation, Governance and Accountability have been incorporated into this Bill. However, our concerns around the silencing of local voice through the aggregation of stakeholders into small Regional Representation Groups (RRG) remain.

The Eastern Central WSE covers 21 Councils, 31 Iwi, and over 200 Marae. With a maximum of 14 members on the RRP, there is obvious risk that small communities will lose their local voice through this transition. The Bill contains no protections to ensure the RRP is truly representative of the communities it serves.

The creation of Regional Advisory Panels (RAP) is supported; however, the Bill contains no legal requirement that the RAP's preferred future development program is adopted by the RRG and subsequently the WSE. This will likely lead to competing priorities between LGOs and the WSE.

The general expectation from our community is that Council's "shareholding" stake will carry influence on Regional Representation Group (RRG). The current drafting of the Bill confirms small rural councils such as Carterton District Council will no longer be able to influence the development of water services in our District due to the restricted numbers on the RRG.

Furthermore, the ability of our Iwi partners ability to engage, participate and voice issues will be similarly restricted through the RRG aggregation model. Like councils, our Māori partners anticipated the creation of the WSE would include new pathways and models for Iwi, hapū and marae participation and governance on the future of water use, wastewater disposal, and stormwater management in their takiwā. The current Bill forces an aggregation of 6 or 7

representatives from 31 Iwi. This appears contradictory to supporting expanded participation and governance for Māori of water services deliverables for our communities.

Council recommend the Government ensure that all LGO's and Iwi are represented on the RRG, by not restricting numbers to an arbitrary number of 12 or 14 seats.

4. Planning Integration

CDC are concerned about how WSEs integrate their planning with council planning processes affecting our communities' wellbeing and placemaking (e.g., long-term plans, annual plans and the Wairarapa combined district plan, etc.).

Council wants to see functions and processes that are integrated and mutually reinforcing. Stormwater is an area of particular concern, where the need for co-ordinated planning and shared responsibility is critical for both organisations success.

The place of the WSEs in the wider system of community wellbeing and placemaking, relative to councils and other stakeholders should be explicit. The Bill should acknowledge and make clear that WSEs are one of a number of enabler entities implementing wider plans for community wellbeing, placemaking, growth and development. Engagement and participation with other stakeholders planning processes should be mandatory requirement for the WSEs.

Council recommend Government ensure the upcoming WSE Planning Bill formally links LGO City and District Plans with WSE three waters planning and investment strategy and parallel timelines.

SPECIFIC COMMENTS ON THE WSE BILL

Acknowledging the above key issues which we believe need addressing through the Select Committee process, CDC wishes to make the following specific comments on the proposed draft WSE Bill:

1. Secondment of Council Staff to the NTU or WSE

Schedule 1 Subpart 2 Cl.11 (2) "... a local government organisation must –

(a) *Comply with any reasonable request by the chief executive of the department or water service entity for employees of local government organisation to be seconded to the water service entity"*

This clause places the continuous delivery of water, wastewater and stormwater services to our communities at risk. LGO staff have been employed by Council to deliver water services to our communities. Council staff were not employed to assist the NTU with transition activities for the next two years.

Council believe water service delivery to our communities must remain the highest priority for LGOs during the establishment period.

In the event the clause is affected by the NTU or WSE, it places the burden on Council to backfill roles, which in a particularly tight labour market often results in long-term vacancies and significant additional workload pressure on remaining staff.

The Bill does not define what is a “reasonable request” leaving the interpretation of this to either common law or ultimately, the Court. Granting the chief executive of the department power of mandated secondment over critical staff, based on an unclear term has the potential to compromise or potentially cripple our Infrastructure services team while we clarify what is meant by the legislation.

Finally, Council opposes the ability of the chief executive of the department to seek a court injunction through the District Court (*Schedule 1, Subpart 2 Cl.13 (3)*) thereby forcing Councils to release staff to the NTU or WSE. This goes against good faith employment negotiation and the spirit of partnership which Council and Government must uphold throughout this transition period.

Recommendations:

- 1.1 That the Select Committee define the term “reasonable request”.
 - 1.2 That the Select Committee remove the ability of the chief executive of the department or water services entity to second staff to the water services entity.
 - 1.3 That the Select Committee remove the ability of the chief executive of the department or water services entity to seek an order from the District Court to enforce staff secondment.
- OR,**
- 1.4 That if the Select Committee continues to grant secondment rights to the chief executive of the department, then an obligation is included in the Bill requiring the parties to jointly complete an impact and risk assessment with specific focus on the LGO’s continued ability to deliver levels of service, post secondment.

2. Employment of Senior Managers

Schedule 1, Cl.16 (1) *“The chief executive of a water services entity must offer an employee of an existing employer an employment position if the chief executive of the department determines under clause 15 that —*

(b) the employee does not have a senior management role.”

The draft legislation is inconsistent with commitments made by the Minister for Local Government – that all staff except senior executives would be offered employment on terms and conditions substantially the same as what they have today.

Broadening the exclusions from senior executives to senior managers greatly widens the scope of roles that are not guaranteed employment in the WSE. Senior executives can be broadly defined as Tier 1 and Tier 2 roles in an organisation i.e., CEO and executive team. Expanding the definition to senior managers now includes all staff at Tier 3 in LGO organisations, which is a much wider exclusion and creates a great deal of uncertainty for our staff.

Employment security is crucial to retention of staff during the transition phase of the reforms. Expanding the scope of those not guaranteed a place in the new WSE’s will result in significantly increased employee churn as staff move in search of better employment security.

Further the WSE Bill fails to define the term “senior manager”. The lack of definition creates significant uncertainty for individuals who are unnecessarily captured within the newly created term.

Council expects such uncertainty will motivate employees, even vaguely at risk of being captured in a senior manager position, to seek alternative employment opportunities outside of the LGO, the WSE or potentially the country.

Recommendations:

2.1 That the Select Committee limit the ability of the chief executive of the department to determine which employees are not senior *executives*, and extend employment offers to all other staff on similar terms and conditions to their existing employment, in line with commitments made by the Minister for Local Government.

2.2 That the Select Committee define the term senior *executive* in partnership with affected LGOs.

OR,

2.3 If the Select Committee decide not to limit the ability of the chief executive of the department to make determinations regarding senior manager employment, then a salary cap is used to clarify this newly defined term.

Carterton District Council recommend senior managers are defined as those with an equivalent full time annual salary and benefits of \$200,000 or more.

3. Employment Terms & Conditions

Schedule 1 (2) (c) *“The terms and conditions of the position offered... must... be in substantially the same general locality or a locality within reasonable commuting distance from the employee’s location of work immediately before the [offer of employment by the WSE]*

It is unclear how “general locality or a locality within reasonable commuting distance” is to be interpreted. The phrase is not defined in the Bill.

One of the great benefits of employment with CDC is the average commute time of 10-15 minutes. The duration, relatively low speed and low traffic volumes of this commute creates a special work-life balance in Carterton and contributes to the well-being of our employees. There will be other locations with similar conditions and commute times.

CDC acknowledges our average commute time is not realistic for all LGOs. However, the undefined reference in this Bill creates additional uncertainty regarding future employment security and the future work environment, individually, or collectively.

Recommendations:

3.1. That the Select Committee refine the phrase *“substantially the same general locality or a locality within reasonable commuting distance”* in the WSE Bill, to *“substantially the same general locality.”*

3.2. That the Select Committee define the term *“general locality”* and if used *“a locality within reasonable commuting distance”*.

3.3. That the Select Committee place the chief executive of the WSE under obligation to ensure that employees are entitled to the same work life balance and well-being as they were entitled to immediately before the transfer of employment to a WSE.

3.4. That the Select Committee define the term *“work life balance”*.

4. Representation of Small Communities and Iwi

Part 2, Clause 27 (2) *“Each regional representative group consists of no fewer than 12, and no more than 14, regional representatives.”*

The Eastern Central WSE has 21 LGO’s, 31 Iwi and over 200 Marae, which will be aggregated into the proposed RRG structure of no more than 14 representatives. At least 14 LGO’s and 24 Iwi will not be represented on the RRG.

Furthermore, the Bill provides no requirement for the RRG to be representative of the diverse communities which each WSE covers.

LGO shareholders will have communities with high expectations of representation, engagement and local voice input. Without clear accountability between the RRG and all LGO Shareholders, small communities local voice is lost.

Urban dominance of the 6 or 7 LGO positions remains highly likely. Furthermore, proposed Regional Advisory Panels (RAP) have no clear channel to ensure accountability from the RRG, and ultimately the WSE for delivery of service, growth and development in smaller communities.

Recommendations:

- 4.1. That the Select Committee reviews the maximum number of representatives and determine how **all** LGO and Mana Whenua will be represented by the RRG.
- 4.2. That the Select Committee place the RRG under obligation to be accountable to all Shareholders not just those appointed to the RRG.

OR

- 4.3. If the Select Committee continues with the proposed maximum of 14 regional representatives that an obligation is included to ensure the RRG is truly representative of the diverse communities each WSE covers.

In Conclusion

Carterton District Council is grateful for the opportunity to submit on this Bill. We share a common goal in providing safe, reliable, and efficient water services for our communities. Carterton District Council encourages the Ministers, the DIA and the NTU to partner with LGOs to ensure the best possible transition to the new WSE’s for our communities, our staff, and our nations’ future.

Yours sincerely,



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