

# Submission

## Water Services Entities Amendment Bill



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SUBMITTED TO: Governance and Administration Select  
Committee  
Parliament Buildings  
WELLINGTON

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via upload to:  
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Ashburton District Council **would like** to make an oral submission to the Committee

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1. Ashburton District Council (Council) welcomes the opportunity to submit feedback on the Water Services Entities Amendment Bill 2023. This submission has been prepared by the Council.
2. Ashburton District (the District) is located in the middle of Canterbury, an hour's drive south of Christchurch and an hour's drive north of Timaru.
3. More than 36,300<sup>1</sup> residents live in our district. Approximately 50% of our residents live in the main town of Ashburton, with the rest of our residents living rurally or in smaller towns or villages across the district. Ashburton District has experienced moderate and sustained population increase since the mid-1990s, increasing by 22% between 2006 and 2013 (a 3.3% increase per year). Since 2013, this growth has slowed slightly, with an average growth of 1.9% per year since 2013<sup>2</sup>.
4. We manage 12 drinking water supply schemes throughout the District. These schemes service approximately 70% of residents and over 10,300 homes and businesses. Of these 12 drinking water supply schemes, nine service less than 500 people including two that are classified as "rural agricultural drinking water supplies".
5. We also help protect community health and safety, and the environment, through the provision of reliable and efficient wastewater schemes. We have three community-based wastewater schemes that service approximately 65% of our population where we manage wastewater collection, treatment and disposal services across the district.
6. Water infrastructure services are critical to the agricultural lifeblood of our community, meeting the needs of residents, business and the agricultural foundations Ashburton District is built from.
7. Previous engagement with our community has reiterated the need for local decision-making and input into water infrastructure reforms and support for improvements in health and environmental standards across water infrastructure. This feedback also expressed concern around the loss of local assets, control and representation, complexity of the water infrastructure reforms as they have evolved, lack of ability for local communities to opt out and speed of the reform process<sup>3</sup>.

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<sup>1</sup> Statistics New Zealand Estimated Population 30 June 2022

<sup>2</sup> Ashburton District Council Environmental Scan 2023

<sup>3</sup> Ashburton District Three Waters reforms consultation 2021

## General comments

8. We acknowledge the rebranding of the previously branded Three Waters reforms to the Affordable Water Reforms, along with the latest iteration of the Water Services Entities Amendment Bill to enshrine this policy position in law.
9. The key features of this bill include introducing the 10-entity model, changes in the timeframes for the entities to start work, the introduction of community priority statements, and other arrangements for water service entity amalgamations, shared services and a water services funding agency. The Bill also includes a range of transitional arrangements for Council accountability, planning and reporting requirements.
10. We reinforce our continued strong opposition to the reforms, as they are proposed.
11. We are a member of Communities 4 Local Democracy (C4LD), and continue to support the model C4LD have proposed for the reform of three waters infrastructure delivery. We remain disappointed in the government's unwillingness to engage on a solution that incorporates these ideas.
12. Given the critical importance of getting the water infrastructure reforms right, and with the 2023 election just 100 days away, we urge the government to pause the reform programme now, either until an electoral mandate is achieved or a new government resets the policy settings to enable a better, more workable and fairer solution.
13. Beyond, this, we also continue to support our previous position of pausing the reform process for up to five years to let the regulator (Taumata Arowai) settle in, enable Councils (where necessary) to up their game in meeting their obligations and responsibilities, and then potentially consider a new approach with greater local input and localised decision-making and control.
14. We support the alternative 10-point Three Waters reform plan outlined in the C4LD submission, which will enable a system founded in local community ownership and control. We also emphasise the five key flaws that underpin the proposed reforms, presented within the C4LD submission.
15. ADC acknowledges and supports the points made in submissions made by the Local Government New Zealand and Taituarā submissions.

## Areas of Concern

16. We remain particularly concerned about the following elements:

### *Truncated opportunity for community feedback*

17. There has been an extremely truncated opportunity for feedback on the new proposal and revised Bill. This includes an inherent inability for the wider community to both understand the merits and implications of, and give their views on the new proposal given its importance. The reform impacts on individual consumers are not remotely clear, and should be so in order for everyone to adequately assess the merits of the reform. Hastily constructed law is generally poor law, which causes many unintended consequences, and this Bill fits that model.
18. The extremely short period for submissions, along with three day period signalled for hearings by the Governance and Administration Select Committee (who have not considered any of the Water infrastructure reforms previously) flies in the face of democratic government and is clearly focused on political expediency to drive legislation through before the 2023 national elections.

### *Loss of local voice and influence*

19. There remains a significant risk of a distinct loss of local voice which has not been placated by the new proposal. The new proposed Canterbury-West Coast entity will be the largest of the entities by area, covering around 75,000 square kilometres, serving nearly 700,000 people. It will include representatives of 15 territorial authorities<sup>4</sup> and an equal number of mana whenua representatives. It will include areas of low to extremely high rainfall. It will include NZ's second largest city and the Canterbury plains, one of NZ's primary production powerhouses.
20. Within this entity, how the balance of metro, provincial, rural and mana whenua representation will be heard and balanced is unclear. It is critical that Ashburton District has strong and clear mechanisms to ensure local perspectives are heard and considered by the new entity, whatever form that eventually takes.

### *Loss of ownership*

21. The new form of Council shareholding remains ownership in name only, and has none of the rights, obligations, responsibilities, and opportunities of ownership as it is currently understood. This has been further emphasised by the recent High Court judgement<sup>5</sup>, which while recognising the sovereign right of parliament to make these decisions, acknowledged the "three waters reforms involve a form of expropriation" without compensation.
22. The previous model included a form of compensation, via the 'Better off' funding regime, which while totally inadequate, at least represented something. Removal of this regime is hugely disappointing, and Council urges its reinstatement should the reforms proceed.
23. Further to that, as noted in the LGNZ submission, we urge the return of a legislatively mandated commitment (previously included in subpart 6 of Schedule 1 of the Act) for Water Service Entities to honour the commitment to the "No Worse off" funding previously announced. This should be amended appropriately to meet any increased costs.

### *Continued uncertainty and disruption*

24. The ongoing and poorly managed reform process continues to create uncertainty, disruption and distraction for our staff, the most critical people involved in the direct delivery of water infrastructure services, let alone for our community. They deserve better.
25. Despite the ongoing attempts to improve the reform programme, Councils and Council staff remain in a state of limbo as the legislative and electoral cycle play out.

### *Lack of confidence in the evidence presented*

26. We continue to have significant doubts over the numbers on which the reform is based and have supposedly created the case for change. The consequences of getting this wrong means that the costs of a new entity will become unaffordable for the average consumer and that the cost of receiving water infrastructure services will escalate significantly.

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<sup>4</sup> Canterbury, West Coast councils and including the parts of the Tasman and Marlborough districts within the boundaries of the takiwa of Ngai Tahu

<sup>5</sup> Timaru District Council and others vs Minister of Local Government [2023] NZHC 244

### *Impact of water infrastructure reforms on emergency events*

27. During emergency events, the interconnectedness of Council teams and functions is showcased. We remain deeply concerned that through the reforms we will no longer employ water infrastructure services staff, reducing our capacity to manage such situations and compromising our training, preparedness and response and recovery capabilities.

### *Alignment of water infrastructure reforms with other local government reform processes*

28. We remain unclear how the reforms will interface with other reform processes currently underway associated with local government, particularly resource management reforms, emergency management and any outcomes that eventually emerge from the Future for Local Government review. We have been given no assurance that the legislative process has adequately considered the unintended consequences of the water infrastructure services reform.

### **Specific comments on Water Services Entities Amendment Bill**

29. In the limited time we have had to consider the new Amendment Bill and its implications, we make a few comments below on specific elements of the Bill.

#### *Establishment dates*

30. Council is concerned at the range of dates included in the Bill for establishing the new entities over the period 1 July 2024 to 1 July 2026. We consider that if and when the entities are established, these should align with a normal financial year with all entities commencing from a 1 July date.
31. A 1 July date means the financial, administrative and other reporting complexities are aligned to a normal financial year.
32. Given the significant implications of establishing the entities and work required by Councils to facilitate this, the date should be set by agreement of the relevant territorial authorities and known publicly prior to the 2023 national elections.

#### *Billing Arrangements*

33. As highlighted in the LGNZ submission, Councils may be compelled to collect water service charges on behalf of the WSE until at least 30 June 2027. We reiterate our previous opposition to this model. Not only will this create confusion amongst consumers, but will also place Councils in the firing line for answering all manner of questions for a service they will no longer deliver or control.

#### *Transitional provisions*

34. Council notes the transitional arrangements included in the Bill relating to Council's decision-making, planning and reporting requirements for the development of the 2024-34 Long Term Plan and other accountability documents over the establishment period.
35. We are supportive of clarity on transitional arrangements being given to the sector.
36. However, we are concerned that the Bill removes any opportunity for the community to comment or submit on any water services decisions to Councils over the establishment period. We think it ironic

that the very clauses promoting transparency and accountability in decision-making and consultation in the Local Government Act are being nullified by the Bill<sup>6</sup>.

### *Decision-Making*

37. We also note that under the Bill, all decision-making relating to water infrastructure may be approved by the Department of Internal Affairs during the establishment period up until 1 July 2026 (or up until the establishment date of the relevant entity)<sup>7</sup>. This represents an extension of powers in the current Water Services Entities Act, and enables the Department to confirm, decline or request further information relating to decisions to adopt or amend a plan or policy under, or required by the Local Government Act 2002.
38. We question the fairness of this approach and the potential for delay to Council processes, should the Department choose to exercise these powers. Delivery of water services to existing service levels is required under the Bill. Council has been delivering this service since 1989 and should be trusted to continue to exercise its future work programme without prejudice.

### *Shared Service Arrangements and Ministerial powers*

39. The Bill (*Section 137A*) also introduces ministerial powers that can be used to force an entity to enter shared services arrangements “to provide a means to achieve scale and efficiency gains under a 10-entity model”<sup>8</sup>. A direction given using these powers must be complied with following the process for engagement included in the Bill.
40. We question the need for these powers, given the government’s reset of the three waters policy was supposed to address the concerns of stakeholders. These clauses appear to enable powers that can override any decisions made by the entity that a sitting government does not agree with and indicates the lack of trust the government have in their own policy solution.
41. Shared service arrangements may also have negative local impacts, threatening local business and capability. For example, this may impact Ashburton Contracting Limited (ACL), a Council Controlled Organisation (CCO) owned by Ashburton District Council that provides some water-related infrastructure services. There is no guarantee of any local input into these shared services arrangements should they be introduced, or ministerial consideration of these impacts should a direction be given.

### *Community Priority Statements*

42. The Bill (*Section 131 (4A)*) introduces Community Priority Statements, a new mechanism “that gives community groups who have an interest in a water body an opportunity to make statements to their entity about their priorities for that body”<sup>9</sup>. The regional representative group (RRG) may then use the statements to set strategic direction or objectives of the entity or in its role in relation to planning and reporting arrangements.
43. While we acknowledge the merits of the Bill seeking to incorporate local input through the mechanism of a Community Priority Statement, we consider this a rapid-fire solution that lacks any substance.

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<sup>6</sup> Subpart 4: Clause 29 *Water Services Entities Amendment Bill*, page 28

<sup>7</sup> Subpart 1A: Clause 14-16 *Water Services Entities Amendment Bill*, page 24-25

<sup>8</sup> Explanatory Notes, *Water Services Entities Amendment Bill*, page 3

<sup>9</sup> Explanatory Notes, *Water Services Entities Amendment Bill*, page 3

There is no obligation for the RRG to take any real notice of these statements. We question how they will have any impact on the delivery of water services.

#### Final comments

44. Thank you for the opportunity to provide feedback on the draft Water Services Entities Amendment Bill.
45. We reiterate Council's continued strong opposition to the reforms and look forward to presenting to the Select Committee.

Kā mihi,



**Neil Brown**  
Mayor



**Hamish Riach**  
Chief Executive