

Tasman District Council (Waimea Water Augmentation Scheme) Bill

Local Bill

As reported from the Governance and Administration Committee

Commentary

Recommendation

The Governance and Administration Committee has examined the Tasman District Council (Waimea Water Augmentation Scheme) Bill and recommends that it be passed with the amendments shown.

Introduction

The Tasman District Council intends to implement the Waimea Water Augmentation Scheme to ensure the security of water supply from the Waimea River catchment. The scheme involves the construction of a dam to allow storage and control of 13.4 million cubic metres of water.

Demand for water, particularly during extreme drought, can lead to unacceptable environmental effects. The scheme would provide water supply for domestic and commercial users in the Waimea Plains and Mapua areas. Resource consents and funding are in place for the scheme.

This bill would facilitate the transfer of two land rights to enable the scheme to proceed:

- The transfer of Crown land to the Council consisting of 1.3516 hectares of riverbed. It is intended that the dam will be built on this riverbed land.
- The right, via an easement, to flood 9.7 hectares of conservation land.

Submissions on the bill

The committee received 137 written submissions and travelled to Richmond to hear orally from 26 submitters. These included submissions of support from the Tasman District Council and Nelson City Council, Waimea Irrigators Ltd, nine representatives

from industry and 20 farmers and orchardists. Most of the submissions opposed were from individual residents and ratepayers. Not all landowners and orchardists were in favour of the scheme due to the cost.

The evidence that the Waimea catchment has a significant water problem over minimum flows and water quality, and that the dam was the best solution, was strong. This position was supported by the technical evidence from respected organisations like Fish and Game, Tonkin and Taylor, Cawthron Institute, and the council's water quality scientists. It was also reinforced by submissions from Andrew Fenemer, a respected land-care scientist, and Dr Morgan William, former Parliamentary Commissioner for the Environment. We did not hear any evidence from any water quality scientist or river ecologist who disputed that this scheme was necessary and beneficial to the river.

We received significant submissions from major industries dependent on water in support of the bill and scheme. Nelson Pine Industries, that process over a third of the region's forest harvest, and employ over 200 people, advised that without the dam the company faced up to 100 days a year with insufficient water to operate, with major implications for the company and region. Waimea Nurseries, that also employs over 200 staff, including part timers, and is New Zealand's largest commercial nursery, stated it would need to relocate or downsize without secure water. We also heard from Boysenberries New Zealand that the Waimea Plains is the capital for this unique crop—producing 30 percent of the total world crop and 60 percent of the New Zealand crop. Boysenberries require a secure supply of water, particularly during the summer peak, and the dam was essential for the industries' future.

We heard significant criticism that the council had not adequately consulted with the community over the scheme. This was disputed by the council, who referenced over 200 public meetings and 17 years of discussion about the problem and opting to address it. We are satisfied that there has been widespread community debate on the project but acknowledge it does not have everyone's support.

The Royal Forest and Bird Society was opposed to the bill because of a concern over the precedent it set in enabling the use of an area of conservation land. They indicated they were not necessarily opposed to the scheme and had agreed to the resource consents through an agreement in the Environment Court.

Other opposition that we heard on the bill was in respect of the issue of how the cost of the scheme fell on ratepayers and the public purse, as compared with the landowners. Others strongly opposed the use of conservation land for commercial and infrastructure purposes. There were also submitters who believed that there were better alternatives than the dam to the water shortage issues in the Waimea catchment.

We received significant submissions from Fish and Game, Federated Mountain Clubs of New Zealand, and the Walking Access Commission on the issue of public access. These submissions were not in opposition to the bill, but were seeking improved access provisions. We were advised that the most challenging access issues are not on the lands covered by this bill, but by the larger areas purchased by council for the reservoir on which we have no jurisdiction. In response to these submissions, we have

recommended a change of wording to the easement provisions in the bill over the areas of conservation and to reverse the presumption in favour of public access, except in the interests of public safety. We also welcomed the letter we received from the Tasman District Council dated 23 October 2018, that commits the council to a process with Fish and Game, the Walking Access Commission, and mountain biking interests to consider further improvements in public access on the areas of land beyond the scope of the bill. This was as far as the committee could go in ensuring improved public access.

We thank all submitters, written and oral, on the bill.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Riverbed land

For clarity, we recommend moving some of the contents of clause 5 to a new clause 5A. This would separate the provisions that deal with the vesting of the riverbed land in the Council, and those that deal with possible subsequent transfers of the riverbed land.

Owner of riverbed land to take reasonable steps to return land to original state if scheme is decommissioned

We recommended inserting clause 5A(4) which would require the owner of the riverbed land to take all reasonable steps to return the land to the state it was in at the commencement of the Act if the scheme is decommissioned, and does not proceed. This provision would ensure the land is returned to the conservation estate if the scheme does not proceed.

Amending the date by which construction must start

Clause 5(4)(b)(i) in the bill as introduced sets out that, if construction of the dam has not started by 1 January 2020, the riverbed land would have to be sold to the Crown. This provision would now be covered in our proposed new clause 5A(3). We recommend extending this date to 1 January 2025 to allow more time, if required, for construction to start.

CCO may transfer land back to the Council

It is not clear in the bill as introduced whether a council-controlled organisation (CCO) would be able to transfer the land back to the Council. We consider it important to provide for this possibility as an alternative to the sale of the land back to the Crown. We therefore recommend inserting clause 5A(2) to specify that a CCO may at any time transfer the land back to the Council.

Right of first refusal status

Clauses 5(6) and 5(7) in the bill as introduced relate to the land having right of first refusal (RFR) status under certain Treaty settlement Acts. For clarity, we recommend amending these to become new clauses 5(4), 5A(6), and 5B.

Records relating to the land

We recommend inserting clause 7(aa) to specify that, until the riverbed land was purchased by the Crown under clause 5A(3), the computer freehold register or record of title for the riverbed land would record that the land was subject to new clause 5A of the bill.

Creating an explicit right of public access

The Schedule to the bill sets out the intended terms of the easement. It is implicit in clause 6 of the bill as introduced that there would be a right of public access. We recommend amending clause 6 of the Schedule to create an explicit right of public access, unless there are public safety concerns which preclude the right.

Appendix

Committee process

The Tasman District Council (Waimea Water Augmentation Scheme) Bill was referred to the committee on 19 September 2018. The closing date for submissions was 5 October 2018. We received and considered 137 submissions from interested groups and individuals. We heard oral evidence from 27 submitters at hearings in Richmond and Wellington.

We received advice from the Department of Internal Affairs.

Committee membership

Brett Hudson (Chairperson)

Ginny Andersen

Kanwaljit Singh Bakshi

Hon Jacqui Dean

Paul Eagle

Hon Peeni Henare

Jamie Strange

Dr Jian Yang

Hon Dr Nick Smith participated in the consideration for some of this item of business.

**Tasman District Council (Waimea Water Augmentation
Scheme) Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Dr Nick Smith

Tasman District Council (Waimea Water Augmentation Scheme) Bill

Local Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Tasman District Council (Waimea Water Augmentation Scheme) Act **2018**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

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3 Purpose

The purpose of this Act is to transfer land and create interests in land currently held by the Crown so that the Waimea Water Augmentation Scheme can proceed.

4 Interpretation

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In this Act, unless the context otherwise requires,—

Council means the Tasman District Council

easement means the easement specified in the **Schedule**

easement land means the 9.6690 ha of land comprised in Section 10 SO Plan 509793 and being part of the land set apart as the Mount Richmond State Forest Park (*Gazette* 1977, p 445) 10

riverbed land means the 1.3516 hectares of land comprised in Section 1 SO Plan 509793

Scheme means the Waimea Water Augmentation Scheme as described in resource consent Nos RM 140556 and RM 140557 issued by the Tasman District Council. 15

4A Act binds the Crown

This Act binds the Crown.

5 Riverbed land vested in Council

(1) The riverbed land is vested in the Council. 20

(2) No marginal strips are reserved from the disposition of the riverbed land, despite section 24 of the Conservation Act 1987.

(3) The Council must pay the market value of the riverbed land to the Crown.

(4) ~~The Council may do either of the following things:~~

(a) ~~transfer the riverbed land to any council-controlled organisation (within the meaning of section 6(1) of the Local Government Act 2002) that is controlled by the Council, either alone or together with any local authority; or~~ 25

(b) ~~sell the riverbed land to the Crown under **subsection (5)** or ensure that the council-controlled organisation does so, as appropriate, if—~~ 30

(i) ~~construction of the Scheme has not commenced by 1 January 2020; or~~

(ii) ~~the Scheme is decommissioned.~~

(5) ~~If this subsection applies, the Council or the council-controlled organisation must offer to sell the riverbed land to the Crown, and the Crown must purchase the riverbed land, at the market value at the date of the offer to the Crown.~~ 35

- (6) ~~The vesting of the riverbed land by **subsection (1)** releases the riverbed land from any RFR status under the Acts to which this subsection applies until the riverbed land is purchased by the Crown under **subsection (5)**.~~
- (7) **Subsection (6)** applies to the following Acts:
- (a) ~~Ngāti Apa ki Te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014:~~ 5
 - (b) ~~Ngati Toa Rangatira Claims Settlement Act 2014:~~
 - (e) ~~Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014.~~
- (4) This section applies despite anything in— 10
- (a) subpart 4 of Part 3 of the Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014; or
 - (b) subpart 4 of Part 3 of the Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014; or 15
 - (c) subpart 4 of Part 3 of the Ngati Toa Rangatira Claims Settlement Act 2014.

5A Subsequent transfers of riverbed land

- (1) The Council may transfer the riverbed land to a council-controlled organisation (within the meaning of section 6(1) of the Local Government Act 2002) that is controlled by the Council, either alone or together with any other local authority. 20
- (2) If the riverbed land is transferred to a council-controlled organisation under **subsection (1)**, the council-controlled organisation may, at any time, transfer the land back to the Council. 25
- (3) If construction of the Scheme has not commenced by 1 January 2025,—
- (a) the owner of the riverbed land (whether the Council or a council-controlled organisation) must offer to sell the land to the Crown at the market value of the land at the date of the offer; and
 - (b) the Crown must accept the offer. 30
- (4) If the Scheme is decommissioned,—
- (a) unless agreed otherwise with the Crown, the owner of the riverbed land (whether the Council or a council-controlled organisation) must take all reasonable steps to return the land to the state it was in at the commencement of this Act; and 35
 - (b) the owner of the riverbed land must offer to sell the land to the Crown at the market value of the land at the date of the offer; and
 - (c) the Crown must accept the offer.

- (5) The Council and the council-controlled organisation must not dispose of the riverbed land except as allowed by this section.
- (6) This section applies despite anything in—
- (a) subpart 4 of Part 3 of the Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014; or 5
- (b) subpart 4 of Part 3 of the Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014; or
- (c) subpart 4 of Part 3 of the Ngati Toa Rangatira Claims Settlement Act 2014. 10

5B RFR status of riverbed land

- (1) The vesting of riverbed land under **section 5(1)** or a transfer of riverbed land under **section 5A(1) to (4)** does not breach—
- (a) section 163(1) of the Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014; or 15
- (b) section 183(1) of the Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014; or
- (c) section 185(1) of the Ngati Toa Rangatira Claims Settlement Act 2014.
- (2) The vesting of riverbed land under **section 5(1)** or a transfer of riverbed land under **section 5A(1) to (4)** does not cause the land to cease to be RFR land for the purpose of— 20
- (a) the Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014; or
- (b) the Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014; or 25
- (c) the Ngati Toa Rangatira Claims Settlement Act 2014.

6 Grant and transfer of easement

- (1) The easement is granted to the Council, despite Part 3B of the Conservation Act 1987 and the Public Works Act 1981.
- (2) ~~The~~ If the Council transfers the riverbed land to a council-controlled organisation under **section 5A(1)**, the Council may transfer the easement to any the council-controlled organisation (within the meaning of section 6(1) of the Local Government Act 2002) that is controlled by the Council, either alone or together with any other local authority. 30
- (2A) If the Council has transferred the easement under **subsection (2)** and the council-controlled organisation transfers the riverbed land back to the Council under **section 5A(2)**, the council-controlled organisation may transfer the easement to the Council. 35

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- (3) The easement may be varied under section 90C of the Land Transfer Act 1952 or section 112 of the Land Transfer Act 2017, whichever applies at the time of registration of the instrument.
- (4) The easement may be surrendered under section 90A of the Land Transfer Act 1952 or section 108 of the Land Transfer Act 2017, whichever applies at the time of registration of the instrument. 5
- (5) The easement must be surrendered within 12 months after the Grantee (as defined in **clause 1** of the **Schedule**) permanently ceases to store water on the land in accordance with any statutory or regulatory consent.
- 7 Issue of title and registration of easement** 10
- The Registrar-General of Land must—
- (a) issue a computer freehold register or record of title for the riverbed land in the name of the Council; and
- (aa) ensure that until the riverbed land is purchased by the Crown under **section 5A(3)**, the computer freehold register or record of title for the riverbed land records that the land is subject to **section 5A**; and 15
- (b) issue a computer freehold register or record of title for the easement land in the name of the Crown and, on the written application of the chief executive of the Council, record the easement and any transfer or variation of the easement on the computer register or record of title for the land. 20

Schedule

Terms of easement

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Inundation easement

Parties	5
Her Majesty the Queen acting by and through the Minister of Conservation (the Grantor).	
Tasman District Council (the Grantee).	
Easement	
The Grantee holds this easement, which is granted by section 4(1) of the Tasman District Council (Inundation Easement) Act 2018 section 6(1) of the Tasman District Council (Waimea Water Augmentation Scheme) Act 2018 , as an easement giving the right to store and retain water on, and release water from, the land on the terms set out in this easement and section 4 of that Act.	
1 Definitions	15
In this Agreement, unless the context otherwise requires,—	
Grantee means the Tasman District Council and any assignee or transferee under clause 10	
Grantor means Her Majesty the Queen acting through the Minister of Conservation, and includes the Grantor’s successors and assigns	
land means 9.6690 hectares being described as section 10 SO Plan 509793 and being part of the land set apart as the Mount Richmond State Forest Park (<i>Gazette</i> 1977, p 445).	
2 Water storage	25
(1) The Grantee may store, retain, and release water within the operating levels established from time to time under the terms of resource consents or other regulatory consents or approvals imposed on the Grantee that relate to the land.	
(2) In the event of unusually heavy inflow of water or rainfall onto the land beyond the reasonable control of the Grantee, the Grantee may, and must if lawfully directed or requested to do so by any civil defence authority or the Tasman District Council acting in its statutory capacity as a unitary authority, store or retain water on the land beyond the operating levels.	
3 Shoreline works	35
(1) The Grantee may carry out planting of vegetation on or about the land with a view to limiting or minimising erosion, land slippage, and flooding, so long as the plantings are in keeping with the character of the land.	

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- (2) The Grantee must use reasonable endeavours to reduce erosion, land slippage, and landslides on the land by available practical and economic means.
- (3) The Grantee must, except in the case of an emergency, obtain the consent of the Grantor before planting vegetation or undertaking works on the land under **subclause (1) or (2)**, which consent must not be unreasonably withheld or delayed. 5
- 4 Removal of material or vegetation**
- (1) The Grantee may remove from any water on or about the land or remove from any part of the land any sediment or other material or any vegetation that, in the opinion of the Grantee, is causing, or is likely to cause, an impediment or danger, injury, or damage to persons or property. 10
- (2) Before carrying out the work, the Grantee must, except in the case of an emergency or due compliance with statutory, regulatory, or resource consent requirements, first obtain the consent of the Grantor.
- 5 Entry and operations** 15
- For the purpose of exercising any of the rights granted or duties imposed under this easement, the Grantee has the right by its employees and contractors to enter and operate any vessel, plant, or equipment upon any water on the land and the land itself.
- 6 Public safety access** 20
- ~~If, at any time, the Grantee considers that there is a situation involving public safety, the Grantee may temporarily exclude entry by any persons to all or any parts of the land.~~
- The Grantee must not restrict public access to the land under this easement except to the extent that is necessary in the interests of public safety. 25
- 7 Ancillary rights**
- The Grantee has the right of access to do any acts and things that are reasonably necessary for the better enjoyment of the rights expressly and impliedly granted by this easement.
- 8 Statutory and consent compliance** 30
- (1) The Grantee must obtain and comply with all statutory and regulatory consents required from time to time to exercise its rights under this easement.
- (2) The Grantee is entitled to apply for any resource consents required for the purpose of the exercise of any of the Grantee's rights under this easement in the same manner as if it were the registered proprietor of the land. 35

9 Fencing

The Grantee must not fence any part of the land, unless it is required as a reasonable condition of the Grantor’s consent when granting any approval under this easement.

10 Assignment of rights

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(1) The Grantee may assign or transfer its rights and obligations under this easement, without the consent of the Grantor, to any council-controlled organisation that is controlled by the Council, either alone or together with any other local authority.

(2) Upon notification to the Grantor of an assignment or a transfer, the provisions of this easement will cease to be binding upon the assignor or transferor, but without prejudice to the assignor’s or transferor’s liability for any prior breach of covenant under this easement.

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11 Variation

This easement may be varied only with the written consent of the Grantor and the Grantee.

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12 Disputes

(1) If any dispute arises between the Grantor and the Grantee concerning the rights created by this easement, the parties will enter into negotiations in good faith to resolve their dispute.

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(2) If the dispute is not resolved within 1 month of the date on which the parties begin their negotiations, the parties may submit to the arbitration of an independent arbitrator appointed jointly by the parties and, if one cannot be agreed upon within 14 days, to an independent arbitrator appointed by the President of the New Zealand Law Society.

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Legislative history

14 August 2018
19 September 2018

Introduction (Bill 95–1)
First reading and referral to Governance and Administration Committee