



23 October 2018

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Chair
Governance and Administration Select Committee
Parliament Buildings
WELLINGTON

Tasman District Council (Waimea Water Augmentation Scheme) Bill– DEPARTMENTAL REPORT

1. This is the departmental report on the Tasman District Council (Waimea Water Augmentation Scheme) Bill (the Bill) for the Governance and Administration Committee (the Committee).
2. This report covers the following:
 - Section 1: Summary of recommended changes
 - Section 2: Introduction and overview of submissions
 - Section 3: Out of scope submissions
 - Section 4: Clause by clause analysis- recommendations and changes
 - Appendix A: List of submitters
 - Appendix B: Department of Conservation commentary on the Bill
 - Appendix C: Land Information New Zealand commentary on the Bill

1. Summary of recommended changes

The Department recommends the following changes to the Bill:

Clause	Recommendation
1.	AGREE to retain clause 1 without amendment
2.	AGREE to retain clause 2 without amendment
3.	AGREE to retain clause 3 without amendment
4.	AGREE to retain clause 4 without amendment
5.	AGREE to amend clause 5 through the insertion of a provision which enables the reversal of the transfer of riverbed land to a council-controlled organisation AGREE to amend clause 5(4)(b)(i) to specify that the start date of the construction of the Scheme is by 1 January 2025 AGREE to amend clause 5(5) to clarify that the subsection referred to in the opening words is subsection 5(4)(b) AGREE to amend clause 5(6) so as to specify that the riverbed land is released from any right of first refusal (RFR) status immediately before the vesting of the riverbed land by subsection (1) of the Bill
6.	AGREE to retain clause 6 without amendment
7.	AGREE to amend clause 7 so as to specify that until the riverbed land is purchased by the Crown under section 5(5) of the Bill, the computer freehold register, or record of title for the riverbed land, records that the land is subject to section 5(4) to (6) of the Bill
8.	AGREE to amend the Schedule by omitting reference to “section 4(1) of the Tasman District Council (Inundation Easement) Act 2018” and substituting “section 6(1) of the Tasman District Council (Waimea Water Augmentation Scheme) Act 2018” AGREE to amend clause 6 of the Schedule to create an explicit right of public access, subject to the public safety provisions contained in clause 6

2. Introduction and overview of submissions

3. This report summarises public submissions on the Tasman District Council (Waimea Water Augmentation Scheme) Bill and recommends amendments. The report presents a clause by clause summary of submitters' comments, and the Department of Internal Affairs' recommendations on amendments to the Bill.
4. The recommended amendments to the Bill are subject to Parliamentary Counsel's discretion on how best to give effect to the policy in each recommendation. Parliamentary Counsel may recommend additional amendments to the Bill as a result of implementing a recommendation of the Department or where they identify a necessary or desirable change that is minor or technical.
5. A list of submitters is listed in **Appendix A**.
6. This report was prepared by the Department of Internal Affairs (DIA), with contributions from the Department of Conservation (DOC) and Land Information New Zealand (LINZ).
7. DOC's commentary is attached as **Appendix B**.
8. LINZ's commentary is attached as **Appendix C**.

Background

9. The explanatory note to the Bill states the Waimea River catchment has been under water pressure for some time. Under low river flows the security of supply to urban and other productive sector users residing in the Waimea plains and the Mapua areas is constrained.
10. Seeking to address this issue, the Tasman District Council (the Council) consulted with a collaborative group involving the Nelson City Council, Fish and Game Council, iwi (including Ngāti Koata, Ngāti Apa ki Te Rā Tō, Ngāti Kuia, Rangitāne o Wairau, Ngāti Toa Rangatira, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui), DOC and water use representatives. Following consultation, the Council elected to proceed with the Waimea water augmentation scheme (the Scheme).
11. The Scheme is intended to operate by allowing for the capture of river flows into storage in a proposed 13.4 million cubic metre reservoir located behind an augmentation dam (the dam). The stored water can be released in a controlled manner during periods of high water demand and/or low natural river flows, and is intended to allow for the recharge of aquifers from which most of the consumed water in the Waimea Plains is extracted.
12. The Scheme is intended to involve the construction of the dam in the Upper Lee Valley. The Lee River is a tributary of the Wairoa River, which in turn flows into the Waimea River in the Tasman District.
13. The construction of the dam would be undertaken by the Council, in partnership with Waimea Irrigators Limited (WIL). WIL was formed in 2016 as an entity to manage rights to access dam water.
14. The purpose of the Scheme is to provide for the water supply needs of domestic and commercial users in the Waimea Plains and Mapua areas. The Scheme is also intended to address the issue of an over-allocated water resource which places pressure on the Waimea river and aquifer environment during low summer flows.
15. Resource consents for construction and operation of the Scheme were granted in 2015. As part of that process DOC agreed to a compensation and mitigation package to address the adverse effects of the project on biodiversity values.
16. DOC has advised that the conditions attached to the resource consents for the dam require the consent holder to deliver a package of biodiversity compensation measures to redress impacts on indigenous habitats and threatened species. This redress is primarily to be achieved through off-site habitat creation and management, and management programmes for specified threatened species. The provisions for threatened species include payments to DOC to enable a pest management programme to be undertaken to enhance a population of the land snail *Wainuia nasuta*.
17. DOC has also advised that the consent holder is also required to establish a Biodiversity Compensation Fund for the protection, restoration or enhancement of vegetation communities in the Waimea River catchment. This fund will be administered by an independent Biodiversity Technical Advisory Group, established under the terms of the consent.

18. The Scheme itself is not dependant on parliamentary authority or approval and the necessary resource consents and funding lines have been secured. However, without the transfer of land rights facilitated by the Bill, the Scheme could not proceed.

Alternative options to give effect to the Scheme

19. Alternative mechanisms to give effect to the Scheme, including processes under the Public Works Act 1981 have not been available.
20. DOC has advised that the Council had originally proposed acquiring the land in Mount Richmond Forest Park by using section 50 of the Public Works Act 1981, which enables the Crown to dispose of an existing public work to a local authority for a public work if reasonable provision for satisfying the public interest in the work will continue.
21. DOC considered there were a number of legal impediments to that process and wrote to the Council in March 2018 suggesting two options: either apply to the High Court for clarification of the provisions under the Public Works Act 1981 or seek local legislation to enable the land required for the dam to be transferred. The Council elected to promote a Local Bill, and has sought an easement over the land within Mount Richmond Forest Park (rather than a transfer of ownership).
22. DOC has advised that a local empowering Bill such as this replaces a consideration by the Minister of Conservation (Minister) of the tests in the relevant protected area legislation, in this case, the Conservation Act 1987, that may permit (or may not allow), the authorisation of an activity.
23. DOC noted that replacing consideration by the Minister with authorisation through this local Bill leaves the primary legislation intact, to be applied in other circumstances. It requires Parliament to consider the implications of a non-conservation use of public conservation land in this instance, and Parliament to determine whether that use should be allowed, and under what conditions.

What the Bill provides

24. The Bill facilitates the Scheme through two consequential matters relating to Crown land. These are:
 - 24.1 The transfer to the Council of 1.3516 hectares of riverbed on which the dam is intended to be built, described as Section 1, Survey Office Plan 509793. This land is currently Crown land. The Council must pay the market value of the river bed land to the Crown. Following transfer to the Council, further transfer of the land could be limited to a council-controlled organisation that the Council controls either alone or with another local authority. A council controlled organisation is defined in accordance with section 6(1) of the Local Government Act 2002.
 - 24.2 The right to inundate 9.6690 hectares of conservation land, described as Section 10, Survey Office Plan 509793, approximately 1.6 kilometres upstream from the dam in the Mount Richmond State Forest Park (the easement land). This right would be granted through an inundation easement conferred on the Council or the easement holder.

25. The Bill:
- 25.1 specifies an obligation on the Council to sell the land back to the Crown if the dam does not proceed or is removed;
 - 25.2 states the Council is able to transfer the land to the council-controlled organisation that will construct and operate the Scheme; and
 - 25.3 states the Council has a right to transfer the easement in due course to the council-controlled organisation that will construct and operate the Scheme.

DIA's advice

26. DIA has focused its advice on issues relating to the specific purpose of the Bill, i.e. the transfer of rights relating to Crown land. DIA is unable to comment on issues relating to the merits of the Scheme.
27. No submissions were received from iwi on the Bill. DIA has not sighted any direct evidence that iwi support the Bill. The Ministry of Justice has emphasised the importance of meaningful iwi consultation and engagement, and ensuring that iwi are comfortable with the proposal before it proceeds.
28. In preparing this departmental report, DIA has sought input from DOC and LINZ. They provided the information attached as **Appendix B** and **Appendix C**, and included as referenced in the body of this report.

The Committee's requests

29. At the public submission hearing in Richmond, held on 19 October 2018, the Committee requested several changes be made to the Bill.
30. These were as follows:
- 30.1 The Committee requested that DIA work with the Council to amend the easement provisions relating to public access. A discussion of this issue is found on pages 24-25 of this report.
 - 30.2 The Committee requested that the commencement timeframe for the Scheme, specified in clause 5(4)(b) of the Bill, be amended to 2025. A discussion of this issue is found on pages 19-21 of this report.
 - 30.3 The Committee requested that certain technical amendments, recommended by the Council, be incorporated into the Bill. A discussion of these issues can be found on pages 20, 23 and 25 of this report.

Overview of submissions

31. The Committee received a total of 137 written submissions on the Bill. Four submissions were from local authorities and key project stakeholders:
 - the Council;
 - WIL (joint venture partners with Tasman District Council);
 - the Scheme's former interim project director and member of the Community Water Solutions Advisory Group; and
 - Nelson City Council.
32. A further 22 submissions were from individuals and groups connected to agriculture, horticulture and irrigation. Five associated local businesses made submissions, and four submissions were received from environmental protection and recreation groups. The remaining 101 submissions were from individuals. A full list of submitters and their affiliations can be found in **Appendix A**.
33. Of the 137 written submissions, 57 were in support of the Bill (including those that gave conditional support). There were 60 submissions that opposed the Bill, with the majority of these submitting that they are opposed to the construction of the dam. The remaining 20 submissions commented on the Bill or on the Scheme without indicating clear support or opposition to the Bill as a whole.
34. Few submissions addressed the specific provisions of the Bill. Most submitters wrote to support or oppose the construction of the dam, and if they opposed the Bill it was because, if passed, it would enable the construction of the dam.
35. It is the prerogative of the Committee to determine the extent to which it considers the merits of the Scheme, as opposed to limiting its consideration to the technicalities and specifics of the Bill.

Arguments made in support of the Bill

36. There were 57 submissions in support of the Bill. These submitters are mostly writing in support of the dam and do not address in detail the clauses of the Bill. In support of the Bill is the Tasman District Council, Nelson City Council and the majority of submissions from horticulturalists, irrigators and associated businesses. Most submitters who support the Bill and the construction of the dam support the detailed arguments in the Council's submission. The following discussion sets out the key issues raised in support of the Bill which will enable the Scheme.
37. In setting out the submissions, we have summarised the claims set out by the submitters.

Addressing critical water shortages

38. Submitters see the dam as the best solution to the district's critical water shortages, which they argue will worsen in the future if the Scheme does not proceed. The Scheme is designed for 100 years of water security. The Council argues the Scheme is necessary to address the issue of an over-allocated water resource, which puts stress on the Waimea River and aquifer environment during low summer flows.

Economic cost to the region of not proceeding with the scheme

39. The Council argues that one of the most significant impact of progressing with the dam is the economic cost of foregone regional growth. The Council cites a number of reports on its website noting the importance of augmenting the water supply and the accruing environmental, social, recreational and cultural benefits. A former Chair of the Nelson Regional Economic Development Agency, which funded two in-depth economic assessments of the water augmentation project over the last decade, submits both studies indicated significant financial benefits to the region flowing on from the construction of the dam. Conversely, failure to proceed with the Scheme is predicted to negatively impact on the economic well-being of the region for future generations. Urban growth will be facilitated by the Scheme which will bring economic benefits to the area. Export markets will suffer if the Scheme does not proceed, and residents of the area will suffer job losses and decline in economic and social well-being. Submitters argue that high-value horticulture is invaluable to the Tasman District economy and that failure to build the dam would be a retrograde step for the region.

Meeting the needs of all stakeholders and improving water quality

40. Submitters in favour of the Bill argue that the Scheme meets the need of all stakeholders, including rural land users, urban and industrial users. It enhances and protects recreational use. Business groups such as Nelson Pine, and many horticulturalists and irrigators argue their activities would become unsustainable without the Scheme. The Council argues that the dam would improve water quality and swimming sites by maintaining regular flows that flush water through the river system. The minimum river flow requirements would mean an improved river ecosystem for recreational users.

The Crown land to be transferred is relatively small and of limited conservation value

41. The Council argues that while it does not wish to diminish the values associated with the DOC land, it is a proportionally small area in relation to the reservoir and the balance of the Mount Richmond Forest Park. Mount Richmond Forest Park constitutes 1,659 square kilometres of Conservation estate. A number of other submitters support the necessity to vest Crown Land to the Council for the Scheme to proceed.
42. One submitter argues that “giving up 9.7 hectares of Department of Conservation Land is a very small sacrifice to make to ensure the dam gets built.”

Consultation on environmental issues was thorough and conservation issues will be addressed

43. The Council submits that ecological effects on the river system arising from the inundation were rigorously assessed and accounted for in the granting of resource consents. The Council submits that the Scheme will provide a compensation fund that will support a biodiversity restoration project in the Waimea River catchment on a long-term basis. This compensation fund is referred to in paragraph 17 above.

Provision has been made for hydro power generation which will assist in reducing carbon emissions

44. The Council argues that the dam will allow for renewable electricity and thereby assist in reducing the Council's carbon footprint.

The science underpinning the Scheme has been well argued and seismic risk assessed

45. The Council argues that using river water to recharge aquifers without the use of pipes, that is relying on nature to deliver the augmented water, is already in use in the Kainui catchment (also in Tasman) on a smaller scale. A former interim project director points out the economic advantage of this method as it requires no additional costs for reticulation (pipes and pumps etc). The Council also states that seismic investigations have been undertaken in order to minimise geological risk. Seismic investigation reports are available on the Waimea Water website, which represents the shared interests of the Council and WIL.

Consultation opportunities have been provided

46. The Council concedes that it has not received unanimous public support for the Scheme. However, it argues that the funding commitments to construct and operate the dam is provided for in its own, and Nelson City Council's respective long-term plans, which were developed after public consultation. The Council also cites the support it has received for aspects of the scheme from the Ministry for the Environment and investors.

Alternative supply options are less cost-effective and do not have the required consents or suitable alternative locations for a dam

47. The Council argues that any alternatives to the Scheme proposed are significantly less cost-effective and would only deal with community water supply risks. They would not lead to improvements in the health of the river or address the water needs of primary producers and manufacturers. The Council would be in competition with any separate irrigation solutions in the search for sites to locate affordable water infrastructure. The Council also submits that it has already obtained resource consents to construct and operate the dam by Consent Order of the Environment Court in July 2015 and that planning provisions are in place to ensure the Council can meet its obligations under the Resource Management Act 1991 and the National Policy Statement on Freshwater Management.

The proposed dam will support and is supported by iwi

48. The Council argues that the proposed dam will support Te Tau Ihu Iwi addressing three of their key concerns – low flows in the Waimea River, over-allocation of the resource and protection of the mauri and wairua of the river system. The Council submit that iwi will be involved in the on-going monitoring of the cultural and environmental health of the river and coastal springs. There will also be access for local iwi to harvest trees and argillite which are treasured taonga.
49. No iwi made submissions on the Bill.

Arguments made in opposition to the Bill

50. There were 60 submitters who oppose the Bill. Their arguments and claims are summarised below.

Concerns about the consultation process and the Council's processes

51. There were 67 submissions that raised concern about the consultation process run by the Council, mainly voicing the opinion that ratepayers in the Tasman District were not properly consulted or that their views were not taken into account in the decision making process. Several submitters were unhappy with the fact that their call for a referendum was rejected twice by the Council on the casting vote of the Mayor. A number of submitters point out that as part of the consultation process on the Long Term Plan 2018-2028, 88% of submissions were against the dam and 12% were in support; 85% of submitters, out of a total of 1700, submitted against the dam in 2017. Submitters say there were too many closed door hearings without public scrutiny. Other matters raised by submitters with respect to the Council's role and its consultation with ratepayers are summarized below:

- some submitters called for a moratorium on the Bill until an investigation into the Council is undertaken by the Auditor-General;
- the relationship between the Council and WIL is seen as problematic, with the company having a substantial financial investment in the Scheme. It is suggested that the Council might prioritise the company's interest over ratepayers;
- the suggestion is made that the Council has exaggerated looming water shortages and is mismanaging available water sources;
- budget forecasts on the cost of the Scheme and advertising budgets promoting the Scheme cause concern. It is suggested the Scheme will have significant cost over-runs that will damage the Council's financial health;
- it was argued that the Council has not fully researched the environmental impacts of the Scheme and its impact on fresh-water fish and recreational use of lands surrounding the dam;
- there is a call for a binding referendum on the desirability of proceeding with the dam. It is claimed that consultation with ratepayers was not well handled and that it is inaccurate to claim that most ratepayers favour the dam.

Consideration of alternative options to the Scheme

52. Fifty one submitters questioned if building the dam is the best solution to the water issues identified by the Council. Some submitters dispute the assertion in the explanatory note to the Bill that other options for water shortage resolution were considered. These submitters suggested independent water supply specialists could be employed to consider options including:

- building a smaller river scheme;

- treating grey (waste) water to make it suitable for irrigation;
- improved use of domestic rain-water tanks;
- promotion of efficient shower heads and low-water toilets;
- the requirement for high water use industries to recycle water;
- addressing water leakage by fixing pipe infrastructure;
- the promotion of onsite water storage;
- conservation measures around timing and use of water;
- promotion of drought resistant and sustainable crops;
- the efficient management of water trigger regimes (i.e. monitoring of available water levels which would trigger rationing/restriction provisions);
- a partnership with Nelson City Council;
- scoping locations with less environmental risk; and
- scoping locations with less risk from seismic activity.

Opposition to financial impact of the dam

53. There were forty six submitters who commented on the funding model and the projected cost of the Scheme. Submitters disputed several aspects of the Council’s funding model. Many believe the cost of the dam will be substantially more than projected, that it will impact on the Council’s ability to meet its financial obligations in other areas, and that ratepayers will be expected to continue to pay for escalating costs. Submitters also question the quoted \$1 billion GDP economic benefits from increased commercial activity if the dam is built.
54. Submitters note that in recent years the estimated cost has surged from \$26 million to \$102 million, and claim that ‘informed critics’ suggest a likely cost of \$150 million or more after infrastructure work is completed. One submitter argues that there is no independent source for peer-reviewed costing information to help ratepayers. Submitters urge the Committee to seek independent advice as to the economic viability of the proposed Scheme. Another argument made by submitters is that repayment of the loans for the Scheme are dependent on continued economic growth which cannot be guaranteed with such factors as climate change and its potential impacts for the region.
55. Submitters are also concerned about the introduction of a non-irrigator new “investor”, suggesting this means ratepayers will be subsidising a speculator in water rights if the Scheme goes ahead.

Opposition because of concerns about rights of access

56. Recreation groups were among submitters who are concerned with public road access to Mount Richmond Forest Park. They argue that the existing formed road that provides access to the area of the planned dam site is not a legal road past the lime works quarry and thus the public has no legal right to it nor access via it to the forest park land beyond. This is the main concern of the Nelson Marlborough Fish and Game Council submission which claims the Bill overrides the marginal strip provision created under the Conservation Act 1987.

Opposition to using conservation land for the Scheme, and environmental concerns.

57. There were 34 submitters who had concerns about using conservation land for the Scheme. Some saw it as setting a dangerous precedent which could lead to further vesting of DOC land by the mechanism of local bills. Submitters argue that removing land from the conservation estate primarily for commercial benefit should not be sanctioned by Parliament. Submitters object to this land being taken to benefit irrigators, and suggest enterprises that rely on irrigation should provide for their own water needs. There was concern about the environmental impact of flooding native forest.
58. The Royal Forest and Bird Protection Society of New Zealand (Forest and Bird) and many individual submitters were concerned about impacts on the flora, fauna, geology and rivers if the Scheme goes ahead as proposed.
59. Concerns about nitrate levels in the ground water under the Waimea plains was voiced by a number of submitters. It was suggested the Council has not fully considered the impact of the Scheme on the ecology of the area or put in place a plan to deal with the Waimea Plains nitrate issue. The Forest and Bird submission raised the point that the resource consent process for the Scheme was unable to explore the impact on water quality from land use intensification as a result of the dam.
60. One submitter raised concerns regarding the impact of the Scheme on an endangered bat species existing in the area.

Opposition to ratepayers being asked to subsidise commercial enterprise

61. There were 27 submitters who objected to all ratepayers being asked to pay for a Scheme which they see as being mainly of benefit to “approximately 30” private irrigators. Several submitters argue that the project benefits wealthy landowners at the expense of ordinary ratepayers. A small number of irrigators submitted that the Scheme does not support them and they see the Scheme as subsidising their competitors.

Opposition on grounds of earthquake risk

62. There were 19 submitters who are concerned that the dam is to be built close to two fault lines and see building an earthen dam in an earthquake zone to be putting the residents of Brightwater and the surrounding area at risk. Submitters express concern about the stability of the underlying rock strata, and they question the Council’s claim that the dam would survive a ‘1 in 10,000 year event’. Submitters mentioned reports claiming the Alpine fault is due to rupture within the next 50 years.

Negotiations with iwi have not been finalised

63. There were two submissions that raised concerns about ongoing negotiations with iwi and they oppose proceeding with the Bill until these negotiations are finalised. These concerns were raised by individual submitters; no iwi made submissions on the Bill.

Section 3: Out-of-scope-submissions

64. This section covers submissions which were outside the scope of the Bill. No recommendations are made in regards these submissions.
65. Submitters contributed the following:
 - 65.1 A request for the Committee to obtain from the Attorney-General an opinion on whether the proposed owner of the dam would be eligible to obtain Requiring Authority Powers under the Resource Management Act 1991 and be able to exercise rights under the Public Works Act 1981.
 - 65.2 A request that the Select Committee recommend that changes be made to the Public Works Act 1981 via other relevant legislation to avoid the need for further special purpose bills like this one.
 - 65.3 A comment that the land is Sensitive Land, as defined by the Overseas Investment Act 2005, and accordingly no decision should be made until there is full disclosure of any application to the Overseas Investment Office from a proposed overseas investor.
 - 65.4 A request for the Committee to establish the actual 'in production' number of hectares of irrigation land supported by the Scheme.
 - 65.5 A request that ground-water pollution and nitrogen levels be fully monitored before and after commissioning of the Scheme, and safe and lower levels set in advance to ensure ground water quality.
 - 65.6 A request that personal financial liability of key promoters of the Scheme be signed in advance of any development of the project, to the exclusion of the Council.
 - 65.7 A request that the Council's cost estimates and modelling of the financial impact on rates be subject to independent review.
 - 65.8 A comment on the pest control aspect of the project in the Upper Wairoa Gorge in partnership with DOC.
 - 65.9 A request that in the event of the Bill proceeding, the Council conducts a binding referendum to determine whether the Scheme will proceed.
 - 65.10 A request that Nelson City Council and Tasman District Council develop a shared water resource management plan.
 - 65.11 A request that the zone of benefit of the proposed dam site be reviewed.
 - 65.12 A request that the Council demonstrate it has a clear mandate from ratepayers to the commitment they are taking on and the risks that it is placing on current and future ratepayers.
 - 65.13 A request that all vegetation and topsoil in the inundation area be cleared and removed from the site of the reservoir.

Section 4: Clause by clause analysis: submissions and recommendations

66. The section covers clauses 1 – 7 of the Bill.

Clause 1 – Title

Explanation of clause

67. Clause 1 is the Title clause. This clause states the title of the Bill.

Summary of submissions

68. There were no submissions on this clause.

Departmental comment

69. No changes are proposed to this clause.

Recommendations

70. We recommend that the Committee:

AGREE to retain clause 1 without amendment.

Clause 2 - Commencement

Explanation of clause

71. Clause 2 is the commencement clause. The Bill, when enacted, comes into force on the day after the date on which it receives the Royal assent.

Summary of submissions

72. There were no submissions on this clause.

Departmental comment

73. No changes are proposed to this clause.

Recommendations

74. We recommend that the Committee:
AGREE to retain clause 2 without amendment.

Clause 3 - Purpose

Explanation of clause

75. Clause 3 is the purpose clause. This clause states the purpose of the Bill is to transfer and create interests in Crown land so that the Scheme can proceed.

Summary of submissions

76. There were no submissions on this clause.

Departmental comment

77. No changes are proposed to this clause.

Recommendations

78. We recommend that the Committee:
AGREE to retain clause 3 without amendment.

Clause 4 – Interpretation

Explanation of clause

79. Clause 4 is the definition clause. It defines the terms Council, easement, easement land, riverbed land and the Scheme. The land is defined in accordance with survey plans that have been certified for Parliamentary purposes.

Summary of submissions

80. There were no submissions on this clause.

Departmental comment

81. No changes are proposed to this clause.

Recommendations

82. We recommend that the Committee:

AGREE to retain clause 4 without amendment.

Clause 5 – Riverbed land

Explanation of clause

83. Clause 5 vests the riverbed land in the Council and enables the Council to do one of the following:
- 83.1 transfer the riverbed land to a council-controlled organisation that is controlled by the Council (either alone or together with any local authority); or
 - 83.2 sell the riverbed land to the Crown or ensure that the council-controlled organisation does so, if construction of the Scheme is not commenced by 1 January 2020 or the Scheme is decommissioned.
84. Clause 5(6) specifies that the Crown’s right of first refusal (RFR) obligations to iwi are suspended while the riverbed land is held by the Council or its council controlled organisation, but are revived if the land is repurchased by the Crown.

Summary of submissions

85. Five submitters commented on clause 5. One submitter supported clause 5 and four submitters recommended changes be made to the clause.
86. Waimea Nurseries Limited supported the vesting of the riverbed land in the Council.
87. Dr Williams, Chair of the Community Water Solutions Advisory Group, noted the explanatory note considers a transfer to the council-controlled organisation that will ‘construct and operate the Scheme’. The Bill enables the transfer 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 other local authority. Dr Williams argued that several entities in the region would meet that definition, who do not have a role in constructing or operating the Scheme. Dr Williams contends these entities should be excluded through an amendment of clause 5(4)(a) through the addition of the words “and which will construct and operate the Scheme”.
88. Jackie McNae also recommended that the entities to which the transfer could be affected are limited to those responsible for constructing and operating the Scheme.
89. The Council requested that clause 5(6) be amended so as to specify that the riverbed land is released from any RFR status immediately before the vesting of the riverbed land by subsection (1) of the Bill.
90. Andrew Fenemor recommends aligning the language of the explanatory note to the Bill to that found in clause 5 of the Bill. The explanatory note states that the Scheme must be commissioned by 1 January 2020, while clause 5 states that construction of the Scheme must have commenced by 1 January 2020.
91. Mr Fenemor and Ms McNae suggest that the commencement timeframe in clause 5 be extended, to ensure that failure to adhere to this timeframe would not jeopardise the Scheme proceeding.

Departmental comment

92. We do not consider it necessary to amend clause 5(4)(a) to specify that the transfer of easements may proceed to a council-controlled organisation, that is controlled by the Council either alone or together with any other local authority and that is responsible for the construction and operation of the Scheme. We consider the current drafting of clause 5(4)(a) would facilitate the intent of the proposed change, and so a drafting change is unnecessary.
93. We cannot see any impediment to the proposed change to clause 5(6) so as to specify that the riverbed land is released from any RFR status immediately before the vesting of the riverbed land by subsection (1) of the Bill.
94. We cannot see any impediment to the proposed extension to the commencement timeframes (to 1 January 2025) specified in clause 5(4)(b)(i) of the Bill.
95. We note that the Bill does not restrict any subsequent disposal of the riverbed land by the council-controlled organisation to which the riverbed land is transferred. We note that the Bill is silent on the extent of the rights possessed by the council-controlled organisation in relation to the riverbed land.
96. We note that clause 5(5) exposes the Crown to financial risk. The clause specifies that the Crown must repurchase the riverbed land from the Council or the council-controlled organisation if the construction of the Scheme does not commence by January 2020 or if the Scheme is decommissioned.
97. We note that clause 5(5) has a potential drafting error. The current opening words are “if this subsection applies”. We consider the opening words should be “If subsection 5(4)(b) applies...”. Subject to adoption of our suggestion below, this may have to be qualified in relation to any decision by the Council or a council-controlled organisation to sell the riverbed land to the Crown.
98. We also note that under clause 5 there does not appear to be an ability to reverse the transfer of riverbed land to any council-controlled organisation. It may be prudent to provide for that eventuality should a future council wish to reverse the transfer. This would provide an alternative to the sale of the riverbed land should the Scheme not be commenced by 1 January 2020 or the Scheme is decommissioned by providing for a reversal clause, allowing a transfer of the riverbed land back to the Council.

Recommendations

99. We recommend that the Committee:

AGREE to amend clause 5(4)(b)(i) to specify that the start date of the construction of the Scheme is by 1 January 2025.

AGREE to amend clause 5(5) to clarify that the subsection referred to in the opening words is subsection 5(4)(b).

AGREE to amend clause 5(6) so as to specify that the riverbed land is released from any RFR status immediately before the vesting of the riverbed land by subsection (1) of the Bill.

AGREE to amend clause 5 through the insertion of a provision which enables the reversal of the transfer of riverbed land to a council-controlled organisation back to the Council should a future Council so decide or as an alternative to the sale of the riverbed land to the Crown.

Clause 6 – Grant and transfer of easement

Explanation of clause

100. Clause 6 confers on the Council an easement to inundate the land. The terms of the easement are clarified in the Schedule of the Bill.

Summary of submissions

101. Two submitters commented on clause 6. One submitter supported clause 6, and one submitter recommended changes be made to the clause.

102. Waimea Nurseries Limited supported the intent of the Bill to confer an inundation easement to the Council, and give the Council the right to transfer the easement in due course to the council-controlled organisation that will construct and operate the Scheme.

103. Dr Williams, Chair of the Community Water Solutions Advisory Group noted the explanatory note considers a transfer to the council-controlled organisation that will construct and operate the Scheme. The Bill enables the transfer 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 other local authority. Dr Williams argued that several entities in the region would meet that definition, which do not have a role in constructing or operating the Scheme. Dr Williams contends these entities should be excluded through an amendment of clause 6(2), through the addition of the words “and which will construct and operate the Scheme” at the end of the clause.

Departmental comment

104. We do not consider it necessary to amend clause 6(2) to specify that the transfer of easements may proceed to a council-controlled organisation, that is controlled by the Council either alone or together with any other local authority and that has a role in the construction and operation of the Scheme, is necessary. We consider the current drafting of clause 6(2) would facilitate the intent of the change, and so a drafting change is unnecessary.

Recommendations

105. We recommend that the Committee:

AGREE to retain clause 6 without amendment.

Clause 7 – Issue of title and registration of easement

Explanation of clause

106. Clause 7 requires the Registrar-General of Land to issue a title to the riverbed land and the easement land in the name of the Crown, and register the title and easement and any transfer of either on the application of the Council's Chief Executive.

Summary of submissions

107. One submitter commented on clause 7.

108. The Council recommended that an additional paragraph be added to clause 7, clarifying that until the riverbed land is purchased under section 5(5) of the Bill, the computer freehold register or record of title for the riverbed land records that the land is subject to section 5(4) to (6) of the Bill.

Departmental comment

109. We do not see any impediment to the proposed amendment to add an additional paragraph to clause 7 clarifying that until the riverbed land is purchased under section 5(5) of the Bill, the computer freehold register or record of title for the riverbed land records that the land is subject to section 5(4) to (6) of the Bill.

Recommendations

110. We recommend that the Committee:

AGREE to amend clause 7 so as to specify that until the riverbed land is purchased by the Crown under section 5(5) of the Bill, the computer freehold register or record of title for the riverbed land records that the land is subject to section 5(4) to (6) of the Bill.

The Schedule

Explanation of clause

111. The Schedule sets out the terms of the easement.

Summary of submissions

112. Six submitters commented on the Schedule.
113. The Council requested a drafting correction – replacing reference to section 4(1) of the Tasman District Council (Inundation Easement) Act 2018 with reference to section 6(1) of the Tasman District Council (Waimea Water Augmentation Scheme) Act 2018.
114. Trish Palmer noted that clause 3(1) of the Schedule, *Shoreline works*, should be more explicit in requiring that any native planting to limit or minimise erosion must be of seedlings raised from plants found in the immediate area, in order to maintain the integrity of the site.
115. Ms Palmer also noted that clause 2(2) of the Schedule, *Water storage*, refers to the grantee potentially storing or retaining water on land beyond the specified operating levels. Ms Palmer queried whether the extra land has been measured, what species will be affected, how the repair work will be undertaken and who will be responsible for recognising and overseeing this.
116. In relation to ensuring that the public has access options to the land impacted by the Dam, Ric Cullinane, Chief Executive of the New Zealand Walking Access Commission (NZWAC) noted that clause 5 of the Schedule refers to access for the grantee, its employees and contractors. Mr Cullinane also referred to the ability of the grantee, under clause 6 of the Schedule, to exclude “any persons to all or any parts of the land for public safety reasons” Mr Cullinane states that the NZWAC is not confident that public access will be provided, and requests that public access provisions are incorporated into the Bill, such as a process for identifying and providing for public access interests.
117. Federated Mountain Clubs and the Nelson-Marlborough Fish and Game Council noted that the Bill does not explicitly include or exclude public access over the easement. They recommend adding a paragraph to clause 5 of the Schedule to clarify that “members of the public have rights of entry to the water and the land itself, subject to the temporary public safety exclusions under section 6”. He argues that this amendment would enable reasonable public access to public land which would normally have public access.
118. Debs Martin, Regional Manager of the Royal Forest and Bird Protection Society of New Zealand states the Schedule is ambiguous in describing and defining the area that may be affected by the Scheme. Ms Martin notes that although the geographical title is limited, the provisions of the schedule may appear to apply to land outside the title area. As an example, she notes the potential need for retaining works within the conservation park to prevent erosion into the inundation area. She argues that the Bill should be clearer in defining the scope of the area affected by geography.

119. Ms Martin also stated that clause 7 of the Schedule is ambiguous in defining the rights of access granted to the grantee. She notes clause 7 allows for the grantee to have the “right to 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”. She states that limits need to be set on what can be done and where, expressly limiting the detrimental effect of the action on the public conservation land surrounding the easement land.

Departmental comment

120. We agree with the proposed replacement of reference in the Schedule to section 4(1) of the Tasman District Council (Inundation Easement) Act 2018 with reference to section 6(1) of the Tasman District Council (Waimea Water Augmentation Scheme) Act 2018. This change will correct a drafting error.
121. We do not consider it appropriate to comment on the appropriate vegetation to be planted with a view to limiting or minimising erosion. DOC has not provided any further advice in relation to this issue.
122. We do not consider it appropriate to comment on the scale of land that may be used in the event of an unusually heavy inflow of water or rainfall, or the species that may be affected. DOC has not provided any further advice in relation to this issue.
123. We agree with the proposed clarification of the terms of public access under the Schedule. The current drafting of clause 6 of the Schedule allows the grantee to temporarily exclude entry by any persons to all or any parts of the land. This wording creates an implied right of access to members of the public, unless public safety concerns preclude access. We recommend clause 6 of the Schedule is clarified to create an explicit right of public access, subject to the public safety provisions contained in clause 6.
124. We do not consider it appropriate to comment on the need to further clarify the area that might be affected by the Scheme in the Schedule. Stakeholder agencies, including the Council and WIL are knowledge holders responsible for the administration of the Scheme and are the appropriate respondents to be consulted on this issue.
125. We do not consider it appropriate to comment on the need to further clarify rights of access for the grantee specified in clause 7. Agencies responsible for the development of the terms of easement, such as the Council, are the appropriate respondents to be consulted on this issue.

Recommendations

126. We recommend that the Committee:

AGREE to amend clause 6 of the Schedule to create an explicit right of public access, subject to the public safety provisions contained in clause 6 of the Schedule.

AGREE to amend the Schedule by omitting reference to “section 4(1) of the Tasman District Council (Inundation Easement) Act 2018” and substituting “section 6(1) of the Tasman District Council (Waimea Water Augmentation Scheme) Act 2018”.

Appendix A: List of submitters

Local authorities and key project stakeholders	
1.	John Hutton (Interim Project director)
2.	Nelson City Council
3.	Tasman District Council
4.	Waimea Irrigators Ltd (Joint Venture Partners with Tasman District Council)
Interest Groups - horticulture, agriculture, irrigation	
5.	Appleby Fresh Limited
6.	Andrew McGlashen
7.	Boysenberries New Zealand Limited
8.	Community Water Solutions Advisory Group
9.	Echodale Marketing Limited
10.	Federated Farmers of New Zealand, Golden Bay Province
11.	Geoffrey M Waring and Gabriele D Waring
12.	Hawke's Bay Fruitgrowers Association Inc
13.	Hoddys Orchard Limited
14.	Horticulture New Zealand
15.	Irrigation New Zealand
16.	JS Ewers Limited
17.	Nelson Provincial Branch of Federated Farmers
18.	Richard Hoddy
19.	Stephen Sutton
20.	The Fresh Fruit Company of Nelson Limited
21.	Vailima Orchard
22.	Wai-West Horticulture Limited
23.	Waimea East Irrigation Co Ltd
24.	Waimea Irrigators and Water Users Society
25.	Waimea Nurseries Limited
26.	William John E Lynch and Erica Lesley Lynch
Business Groups	
27.	Aica NZ Ltd
28.	Alliance group Ltd
29.	Bryan and Ann Riley
30.	Nelson Pine Industries Ltd
31.	Robin Whalley
Environmental Protection and Recreation	
32.	Federated Mountain Clubs of New Zealand
33.	Nelson Marlborough Fish and Game Council

34.	New Zealand Walking Access Commission Ara Hikoī Aotearoa
35.	Royal Forest and Bird Protection Society of New Zealand Inc
Individuals	
36.	Adrian Malony
37.	Alan Matthews
38.	Amelia Opie
39.	Andrew Fenemor
40.	Anne Webber
41.	Anthony Opie
42.	Arthur Northcote
43.	Barry Jenkins
44.	Brett Daniell-Smith
45.	Bruce Collings
46.	Bruce Dooley
47.	Carl Krijt
48.	Catherine Hughson
49.	Chris Jones
50.	Colin England
51.	Colin Garnett
52.	Colin Johnson
53.	Dan McGuire
54.	Daniel Sime
55.	David Allpress
56.	David Easton
57.	David Richards
58.	David Rodgers
59.	Derek Austin
60.	Dylan Hedges
61.	Elisabeth Siegmund
62.	Elizabeth McCarthy
63.	Erin Hawke
64.	Franca Morani
65.	Georgina Vanner
66.	Giuliana Morani
67.	Hagen and Jane Jurke
68.	Heather Olds
69.	Ian Alach
70.	Ian MacLennan

71.	Irina Wares
72.	Jackie McNae
73.	Jane Bellerby
74.	Jeremy Smart
75.	John Bealing
76.	John Ing
77.	John Lee
78.	John Nicols
79.	John Wares
80.	K.A. Hoos
81.	Karen Brookes
82.	Kathleen Ing
83.	Kathleen Lauderdale
84.	Kevin Walmsley
85.	Kim McGlashen
86.	Kit Maling
87.	Laura Johnson
88.	Lesley Dawson
89.	Lewis Soloman
90.	Lindy Valente
91.	Louisa Holland
92.	Marc Gall
93.	Margaret Maloney
94.	Martin Hanson
95.	Maureen McMillan
96.	Maurice and Sherry Henwood
97.	Max Rogers
98.	Mik Symons
99.	Mike Rimu
100.	Mike Rutledge
101.	Nathan Gargiulo
102.	Nicola Basham
103.	Pamela Williams
104.	Pat Heaphy
105.	Paul Dalzell
106.	Paul Marcussen
107.	Paula le Compte
108.	PD and JM Cheyne

109.	Peter Laufkotter
110.	Philip de Weck
111.	R Langford
112.	Reinhard Gebhard
113.	Remko Ros
114.	Rhonwen Seager
115.	Richard Struthers
116.	Richard Turner
117.	Robert Mitchell
118.	Robin Virginia Robilliard
119.	Rodney Barker
120.	Roger Dunham
121.	Rys Waldrop
122.	Scott Starling
123.	Sharyn Fitzsimmons
124.	Silvia Schneider
125.	Stanley Wayne Mackey
126.	Steve Cross
127.	Sue Higgins
128.	Sue Le Grange
129.	Suzie Elford
130.	Timothy Tyler
131.	Tony Gargiulo
132.	Tony Hazlett
133.	Trish Palmer
134.	Victoria Davis
135.	Vincent Tavendale
136.	Wayne Walker
137.	William Wallis

Appendix B - Comments on the Tasman District Council (Waimea Water Augmentation Scheme) Bill from the Department of Conservation (DOC)

1. The Bill provides for an easement in favour of the Tasman District Council to be created over 9.6690 hectares of public conservation land, within Mount Richmond Forest Park. The Bill also provides for 1.3516 hectares of Crown riverbed (administered by Land Information New Zealand) to be vested in Council, without the requirement to reserve marginal strips under section 24 of the Conservation Act 1987.
2. The Bill vests the riverbed land in the Council without the requirement to reserve marginal strips under section 24 of the Conservation Act. The Council can transfer the land to the council-controlled organisation (yet to be formed) that will construct and operate the dam. The Council must pay the market value of the riverbed land to the Crown and there is an obligation to sell the land back to the Crown if the dam does not proceed or is removed.
3. The Bill directly grants an easement to the Council in respect of the land within Mount Richmond Forest Park, and gives the Council the right to transfer the easement in due course to the council-controlled organisation.
4. The easement included in the Bill provides the Council with rights to:
 - (a) store and retain water on, and release water from, the land;
 - (b) plant vegetation on the shoreline to minimise erosion, land slippage and flooding;
 - (c) remove material or vegetation from the water or land if it is causing or likely to cause an impediment, danger, injury or damage to persons or property;
 - (d) enter and operate any vessel, plant, or equipment upon any water on the land and the land itself; and
 - (e) temporarily exclude entry by any person to all or any parts of the land, if there is a situation involving public safety.
5. The Department of Conservation's primary interest is in the land within Mount Richmond Forest Park, which is a deemed conservation park administered by the Department.
6. A local empowering Bill such as this, replaces consideration by the Minister of Conservation of the tests in the relevant protected area legislation, in this case, the Conservation Act 1987, that may permit (or may not allow), the authorisation of an activity.
7. Replacing consideration by the Minister with authorisation through this local Bill leaves the primary legislation intact, to be applied in other circumstances. It requires Parliament to consider the implications of a non-conservation use of public conservation land in this instance, and Parliament to determine whether that use should be allowed, and under what conditions.

Conservation value of the area within Richmond Forest Park

8. The area within Mount Richmond Forest Park is an irregular shaped parcel of river bed and moderate to steep hill slopes (the river flows through a confined gorge at this location). It supports approx. 7.2 ha of indigenous vegetation, approx. 80% of which is riparian and hill-slope beech forest, with the remaining 20% being flood-zone turf plant communities.
9. The river bed contains small areas of gorge flood-zone turf plant communities, whilst most of the riparian zone is more or less vertical bedrock and supports an open treeland/shrubland of whiteywood, kanuka and kowhai. The hill slopes support indigenous beech forest (black, hard, red and silver beech, the composition changing with aspect and altitude). Riparian beech forest in the upper gorge appears to be unmodified (by humans) mature forest. The size of beech trees indicates a forest age of around 300 years old. The lowland hill-slope beech forest has pockets up to around 300 years old but most is even aged stands around 150 – 200 years old. Lowland hill-slope beech forest in the Nelson Ecological Region has been reduced to 6% remaining compared to its pre-human extent, although it is locally extensive within the Lee Catchment, adjoining Wairoa Catchment and other nearby catchments. The balance of the area is un-vegetated river bed and open water.
10. Plants of conservation significance that occur, or may occur, within the subject area include rock coprosma (*Coprosma brunnea*; current national threat status “Data Deficient”), scented broom (*Carmichaelia odorata* var. “*glabrata*”; not threatened, but considered to be regionally vulnerable) and river-cloak daisy (*Euchiton polylepis*; “At Risk – Naturally Uncommon”). Shovel mint (*Scutellaria novae-zelandiae*; classified as “Nationally Critical”) also occurs within the reservoir footprint, but the known populations affected by the proposal are downstream of (outside) Mount Richmond Forest Park.
11. A population of the land snail *Wainuia nasuta* also occurs within the reservoir footprint, and may extend into Mount Richmond Forest Park.

Recreation access to the area

12. Public access to, and recreational use of, the subject area is extremely limited, as access to Mount Richmond Forest Park via the Lee Valley is through private landholdings (subject to the landowners’ consent) or along the bed of the river itself. The narrow gorge and steep hill slopes within this part of Mount Richmond Forest Park make public access extremely challenging, and impractical for most users.

DOC’s involvement in the project

13. The Department of Conservation (DOC) has been liaising with the Council on the project for many years, having been part of the now inactive Waimea Water Augmentation Committee (WWAC) which was established in 2003 to address the acute water shortage problems of the Waimea Basin following severe droughts in 2000/2001.

14. WWAC investigated a number of alternative water management options. This process ultimately resulted in the preferred option of constructing a water storage dam on the Lee River (the current proposal).
15. Resource consents for construction and operation of the scheme were granted in 2015. As part of that process DOC agreed to a compensation and mitigation package to address the adverse effects of the project on biodiversity values. The compensation was for the effects of the activity, not for the land no longer being fully in the protected conservation estate, as now being proposed.
16. The Council has been progressing land purchases or other legal rights of tenure for the project and this is effectively complete, apart from the areas addressed in the Bill.
17. The Council had originally proposed acquiring the land in Mount Richmond Forest Park by using section 50 of the Public Works Act, which enables the Crown to dispose of an existing public work to a local authority for a public work if reasonable provision for satisfying the public interest in the work will continue.
18. DOC considered there were a number of legal impediments to that process and wrote to the Council in March 2018 suggesting two options: either apply to the High Court for clarification of the provisions under the Public Works Act or seek local legislation to enable the land required for the dam to be transferred. The Council elected to promote a local bill, and has sought an easement over the land within Mount Richmond Forest Park (rather than a transfer of ownership).

Effect of the proposed easement

19. The easement specified in the Bill would provide the Council with the legal authorisation to store and retain water on 9.669 ha of land within Mount Richmond Forest Park. This land will be inundated (flooded) if the dam is constructed, and the current values of the land will be permanently lost.

Compensation for adverse effects through the resource consent process

20. Resource consents for construction and operation of the scheme were granted in 2015. As part of that process DOC agreed to a compensation and mitigation package to address the adverse effects of the project on biodiversity values, both on and off public conservation land. Public access to, and recreational use of, the subject area is extremely limited, and no compensation was sought in respect of these values. In this instance, compensation for the land being effectively alienated from the public conservation estate was not sought as part of the biodiversity compensation either, as the quantum of land value was not significant.

21. The conditions attached to the resource consents for the dam require the consent holder to deliver a package of biodiversity compensation measures to redress impacts on indigenous habitats and threatened species. This redress is primarily to be achieved through off-site habitat creation and management, and management programmes for specified threatened species. The provisions for threatened species include payments to DOC to enable a pest management programme to be undertaken to enhance a population of the land snail *Wainuia nasuta*.
22. The consent holder is also required to establish a Biodiversity Compensation Fund for the protection, restoration or enhancement of vegetation communities in the Waimea River catchment. This fund will be administered by an independent Biodiversity Technical Advisory Group, established under the terms of the consent.

Appendix C - Comments on the Tasman District Council (Waimea Water Augmentation Scheme) Bill from Land Information New Zealand (LINZ)

Disposal of river beds

1. It is not common for LINZ to dispose of the freehold interest in a river bed. We were approached by the Council seeking to have part of the Crown-owned riverbed set apart for a public work (for the site of the dam structure). Our advice is that there is risk to the Crown from disposing of the freehold interest in a riverbed, as section 24F of the Conservation Act, which relates to the status of riverbeds when adjoining land is disposed of, could apply to this situation.

Section 5(4) of the Bill

2. LINZ recommends considering a scenario in which the Council, or council-controlled organization wishes to sell all or a majority of its interest in the dam to a private entity to administer. The current provisions in the Bill provide only for circumstances in which the construction has not commenced, or the Scheme is decommissioned.