

**South Taranaki District Council
(Cold Creek Rural Water Supply)
Bill**

Local Bill

As reported from the Local Government and
Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the South Taranaki District Council (Cold Creek Rural Water Supply) Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The South Taranaki District Council (Cold Creek Rural Water Supply) Bill seeks to establish a process by which the council may obtain the authority to transfer the Cold Creek Rural Water Supply Scheme to Cold Creek Community Water Supply Limited. The scheme primarily provides water for farming purposes, and services around 162 connections in an area covering 7,620 hectares in the Pihama/Te Kiri area in South Taranaki. Cold Creek Community Water Supply has managed the scheme since 2001 through an informal arrangement with the Council. This arrangement is deemed to be unsatisfactory

as regards the present management and operation of the scheme, and the way the capital costs were originally funded.

This commentary covers the key amendments we recommend to the bill. It does not cover minor or technical amendments.

Interpretation

We recommend amending clause 4 by dividing the definition of “scheme assets” into capital assets (previously paragraphs (a) to (i)) and rights and privileges (previously paragraphs (j) to (l)). We propose this separation for consistency with the Resource Management Act 1991.

We also recommend amending clause 4 to exclude the cross linkage pipeline (beyond the connection point or tee junction) that may be used to supplement the Opunake water supply in certain emergency situations. This pipeline would remain in Council ownership should the scheme be divested. The amendment we propose would make this intent clear.

Transfer process

We recommend amending clause 5 to provide an opportunity for authorities representing iwi whose rohe wholly or partly encompass the scheme distribution area to be consulted, and for the Council to make their views publicly available. These amendments are consistent with section 14(1)(d) of the Local Government Act 2002, which says that “a local authority should provide opportunities for Māori to contribute to its decision-making processes”.

Eligibility to vote in referendum

We recommend amending clause 7 to make it clear that eligibility to vote would be restricted to properties within the scheme distribution zone. We considered whether the residents of Opunake should be included in the referendum in recognition of the emergency supply agreement, but ultimately decided not to recommend such an amendment.

We also considered whether the referendum should include all electors in the South Taranaki region. However, the public subsidy for construction of the scheme came from taxes not rates, and it would

be impractical to have a referendum over the whole country. The majority of us believe that it is fair for the referendum to cover only those covered by the scheme.

We have been assured that the Council and the Company have agreed to continue the current arrangement for the scheme to supplement the Opunake water supply in an emergency.

We also recommend a consequential amendment to clause 9(b).

Requirements for plans and assessments

We recommend several amendments to clause 8, to require the Company to assess its capability and commitment if property within the scheme's distribution zone were to be transferred or leased to another person, and to clarify that the assessment includes the supply of water to Opunake in emergencies.

We also recommend amendments to require the Company to prepare a protocol for appropriate liaison with relevant iwi whose rohe lie in the distribution area.

Matters relating to transferring the scheme

We recommend deleting clauses 12(1) and 13. Clause 12(1) seeks to exempt the Council from certain duties imposed by section 125 of the Local Government Act 2002 (assessments of water and sanitary services); while clause 13 would exempt the Council from certain duties relating to drinking water under the Health Act 1956. These provisions are outside the scope of the bill as expressed in the explanatory note and clause 3, and we therefore recommend deleting them.

We are aware that the Council felt the Company should be contracted to assist the Council in meeting its statutory obligations, and should indemnify the Council against liabilities. We are assured that the Council and the Company have agreed to provide the Council with any information it needs to complete an assessment under section 125 of the Local Government Act, and have also agreed to a binding and irrevocable indemnity regarding the obligations of the Council under the Health Act relating to drinking water.

We also recommend inserting new clause 13A to require the South Taranaki District Council to notify the Taranaki Regional Council, as

soon as practicable, that the scheme has been transferred. This would allow the regional council to liaise with the Company on resource management matters.

Green Party minority view

The Green Party does not support the Council's divestment of the Cold Creek Water Supply given significant public funding for the scheme infrastructure, including a 1984 Crown grant of \$1.28 million for half of the scheme's construction costs and ratepayers' contribution to its operating costs. It remains concerned about the potential for the scheme's privatisation to affect the value of and potential rental return from leases in perpetuity over Māori reserve land in the scheme area and the land owners' access to water from the scheme. The Green Party shares the concerns of Taranaki Iwi and Ngati Ruani about the precedent which the bill may set for water management. The Green Party considers that the referendum should include all residents of South Taranaki District because of past public funding of the scheme and because of officials' advice that the Council's proposed divestment was not sufficiently described in the Council's draft Long Term Plan for 2012–22 to provide a basis for public consultation.

Appendix

Committee process

The South Taranaki District Council (Cold Creek Rural Water Supply) Bill was referred to the committee on 21 March 2012. The closing date for submissions was 3 May 2012. We received and considered 41 submissions from interested groups and individuals. We heard four submissions.

We received advice from the Department of Internal Affairs.

Committee membership

Nicky Wagner (Chairperson)

Maggie Barry

Jacqui Dean

Paul Goldsmith

Gareth Hughes

Raymond Huo

Nikki Kaye

Hon Annette King

Moana Mackey

Eugenie Sage

Hon Dr Nick Smith

Andrew Williams

Hon Chester Borrowes participated in the consideration of this bill.

South Taranaki District Council (Cold
Creek Rural Water Supply) Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Chester Borrows

**South Taranaki District Council
(Cold Creek Rural Water Supply)
Bill**

Local Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the South Taranaki District Council (Cold Creek Rural Water Supply) Act **2011**.
- 2 Commencement** 5
This Act comes into force on the day after the date on which it receives the Royal assent.
- Part 1**
Preliminary provisions
- 3 Purpose** 10
The purpose of this Act is—
- (a) to specify the process that the South Taranaki District Council must follow to authorise a transfer of the Cold Creek Rural Water Supply Scheme to Cold Creek Community Water Supply Limited; and 15
 - (b) to provide for certain related matters if the scheme is transferred to the Company.
- 4 Interpretation**
In this Act, unless the context otherwise requires,—
- Company** means Cold Creek Community Water Supply Limited 20
- Council** means the South Taranaki District Council
- ivi authority** has the same meaning as in the Resource Management Act 1991
- Registrar** means the Registrar-General of Land 25

scheme means the Cold Creek Rural Water Supply Scheme that is vested in the Council, and includes the scheme assets

scheme assets means the real and personal property of the Council that is held or used (whether solely or partially) for the purposes of the scheme and includes— 5

- (a) the intake structure:
- (b) the treatment plant:
- (c) the land on which the treatment plant is situated, being the land described in the Schedule:
- (d) the in-ground covered reservoir: 10
- (e) two waste discharge ponds:
- (f) the pipes and pressure reducing valves:
- (g) other valves and supply point connections:
- (h) all water meters for the scheme:
- (i) the electronic control and monitoring equipment: 15
- (j) land use consent 5554 (to erect and maintain an intake structure):
- (k) water permit 1134=2 (to take up to 5 095 cubic meters per day or 59 litres per second):
- (l) discharge consent 6077 (to discharge filter backwash water and supernatant): 20

scheme assets—

- (a) means the real and personal property of the Council that is held or used (whether solely or partially) for the purposes of the scheme; and 25
- (b) includes the following:
 - (i) the intake structure:
 - (ii) the treatment plant:
 - (iii) the land on which the treatment plant is situated, being the land described in **Schedule 1**: 30
 - (iv) the in-ground covered reservoir:
 - (v) two waste discharge ponds:
 - (vi) the pipes and pressure-reducing valves:
 - (vii) other valves and supply point connections:
 - (viii) all water meters for the scheme: 35
 - (ix) the electronic control and monitoring equipment;
and
- (c) includes the following resource consents granted under the Resource Management Act 1991:

- (i) land use consent 5554 (to erect and maintain an intake structure):
 - (ii) water permit 1334-2 (to take up 5 095 cubic metres per day or 59 litres per second):
 - (iii) discharge consent 6077 (to discharge filter back-wash water and supernatant); but 5
 - (d) does not include the cross-linkage pipeline (beyond the connection point) used for the purpose of providing water to Opunake residents in certain emergencies
- scheme distribution area** means the area coloured blue on the map set out in **Schedule 2**. 10

Part 2

Process for obtaining authorisation to transfer scheme

- 5 Council to follow transfer process** 15
- The Council must transfer the scheme to the Company if—
- (a) the Council has consulted on the proposal with the Medical Officer of Health for Taranaki; and
 - (b) the Council has made publicly available in a balanced and timely manner prior to the referendum— 20
 - (i) the views of the Medical Officer of Health; and
 - (ii) the transfer plan and the proposed agreement outlining the roles and responsibilities of the Company and any contractors (including the Council) in relation to the scheme; as prepared by the Company under **section 8**; and 25
 - (iii) the assessments made by the Company under **section 8**; and
 - (c) the proposal is supported, in a referendum conducted under section 9 of the Local Electoral Act 2001 using the First Past the Post electoral system, by more than 50% of the votes cast by the persons eligible to vote under **section 7**. 30
- 5 Council to follow transfer process**
- (1) The Council must transfer the scheme to the Company if— 35
- (a) the Council has complied with **subsection (2)**; and

- (b) the transfer is supported, in a referendum conducted under section 9 of the Local Electoral Act 2001 using the First Past the Post electoral system, by more than 50% of the votes cast by the persons eligible to vote under **section 7**. 5
- (2) The Council complies with this subsection if—
- (a) the Council has consulted on the proposed transfer with—
- (i) the Medical Officer of Health for Taranaki; and
- (ii) every iwi authority in relation to each iwi whose rohe comes, wholly or in part, within the scheme distribution area; and 10
- (b) the Council has made publicly available in a balanced and timely manner prior to the referendum—
- (i) the views of the Medical Officer of Health; and 15
- (ii) the views of every iwi authority consulted under **paragraph (a)(ii)**; and
- (iii) the transfer plan and the proposed agreement outlining the roles and responsibilities of the Company and any contractors (including the Council) in relation to the scheme, as prepared by the Company under **section 8**; and 20
- (iv) the assessments made by the Company under **section 8**.
- 6 Responsibility for conduct of referendum** 25
- (1) The Council is responsible for conducting the referendum under **section 5(c) 5(1)(b)**.
- (2) The electoral officer of the Council must prepare a special roll of the persons eligible to vote under **section 7**.
- (3) The provisions of the Local Electoral Act 2001 apply, with any necessary modifications, to the conduct of the referendum under **section 5(c) 5(1)(b)**. 30
- 7 Eligibility to vote in referendum**
- A person is eligible to vote in a referendum conducted under **section 5(c)** if the person is qualified as either— 35
- (a) a residential elector under section 23 of the Local Electoral Act 2001 and the address in respect of which the

- person is registered as a parliamentary elector is a property serviced by the scheme or capable of being serviced by the scheme; or
- (b) a ratepayer elector under section 24 of the Local Electoral Act 2001 and the property, for the purposes of section 24(1)(a) or (b) of that Act, is a property serviced by the scheme or capable of being serviced by the scheme. 5

7 Eligibility to vote in referendum

A person is eligible to vote in a referendum conducted under **section 5(1)(b)** if the person is qualified as either— 10

- (a) a residential elector under section 23 of the Local Electoral Act 2001 and the address in respect of which the person is registered as a parliamentary elector is a property— 15
- (i) serviced by the scheme or capable of being serviced by the scheme; and
- (ii) within the scheme distribution area; or
- (b) a ratepayer elector under section 24 of the Local Electoral Act 2001 and the property, for the purposes of section 24(1)(a) or (b) of that Act, is a property— 20
- (i) serviced by the scheme or capable of being serviced by the scheme; and
- (ii) within the scheme distribution area.

8 Requirements for plans and assessments

- (1) The Company must, to the Council's satisfaction,— 25
- (a) prepare a transfer plan which complies with **section 9**; and
- (b) prepare an analysis of the types of contractual arrangements that the Company will need to enter into with the Council and other parties to obtain goods and services in relation to the maintenance and operation of the scheme; and 30
- (c) assess the likely future capital and operating costs of the Company to maintain and operate the scheme for a period of 30 years from the proposed date the scheme is to be transferred to the Company; and 35

- (d) assess the ability of the Company to maintain and operate the scheme (including providing water to Opunake residents in certain emergencies) satisfactorily for a period of 30 years from the proposed date the scheme is to be transferred to the Company; and 5
- (e) prepare a protocol that provides for appropriate consultation by the Company with every iwi authority in relation to each iwi whose rohe, wholly or in part, comes within the scheme distribution area.
- (2) The assessment under **subsection (1)(d)** must include an assessment of the Company's ability and commitment in relation to any property within the scheme distribution area if the property were to be transferred or leased to another person. 10
- 9 Transfer plan**
- The transfer plan must contain the following: 15
- (a) a plan of the scheme; and
- (b) a description of the land or property ~~which~~ that is served serviced by the scheme and that is within the scheme distribution area; and
- (c) further details of any of the scheme assets, including specifying any permits or rights of any kind in respect of any of the scheme assets; and 20
- (d) any rights conferred by designations under the district plan applying to any land relating to the scheme; and
- (e) any rules in the regional plan relating to the scheme. 25

Part 3

Matters relating to transfer of scheme

10 Application of Part

This Part applies if the Council transfers the scheme to the Company. 30

11 Certain matters not affected by transfer of scheme

The transfer of the scheme to the Company—

- (a) does not constitute a breach of contract or agreement, or a civil wrong; and

- (b) is not to be regarded as giving rise to a right for any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; and
- (c) is not to be regarded as placing the Council, the Company, or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; and 5
- (d) does not release any surety or guarantor wholly or in part from any obligation with respect to the scheme; and 10
- (e) does not invalidate or discharge any contract or security.

12 Application of Local Government Act 2002

- (1) ~~The Council is not required to include the scheme in any assessment under section 125 of the Local Government Act 2002.~~ 15
- (2) Subpart 2 of Part 7 of the Local Government Act 2002 does not apply to the scheme.

13 Application of Health Act 1956

- (1) ~~On and from the date that the scheme is transferred to the Company,—~~ 20
 - (a) ~~the Council is exempt from the duties imposed on it by Part 2 of the Health Act 1956 as those duties relate to the scheme; and~~
 - (b) ~~it is the duty of the Ministry of Health to do all such things as it considers necessary for the improvement, promotion, and protection of public health in relation to the scheme.~~ 25
- (2) ~~All expenses incurred by the Ministry in the exercise of powers under this section are recoverable from the Company as a debt due to the Crown.~~ 30

13A Taranaki Regional Council to be advised of transfer

As soon as practicable after the scheme is transferred to the Company, the Council must notify the Taranaki Regional Council that the scheme has been transferred to the Company and the date of the transfer. 35

14 Taxation and duties provision

- (1) For the purposes of the Goods and Services Tax Act 1985, the transfer of the scheme from the Council to the Company is a transfer of part of a taxable activity as a going concern that is capable of separate operation. 5
- (2) For the purposes of the Estate and Gift Duties Act 1968, the transfer of the scheme from the Council to the Company is not a disposition of property.

15 Transfer of land

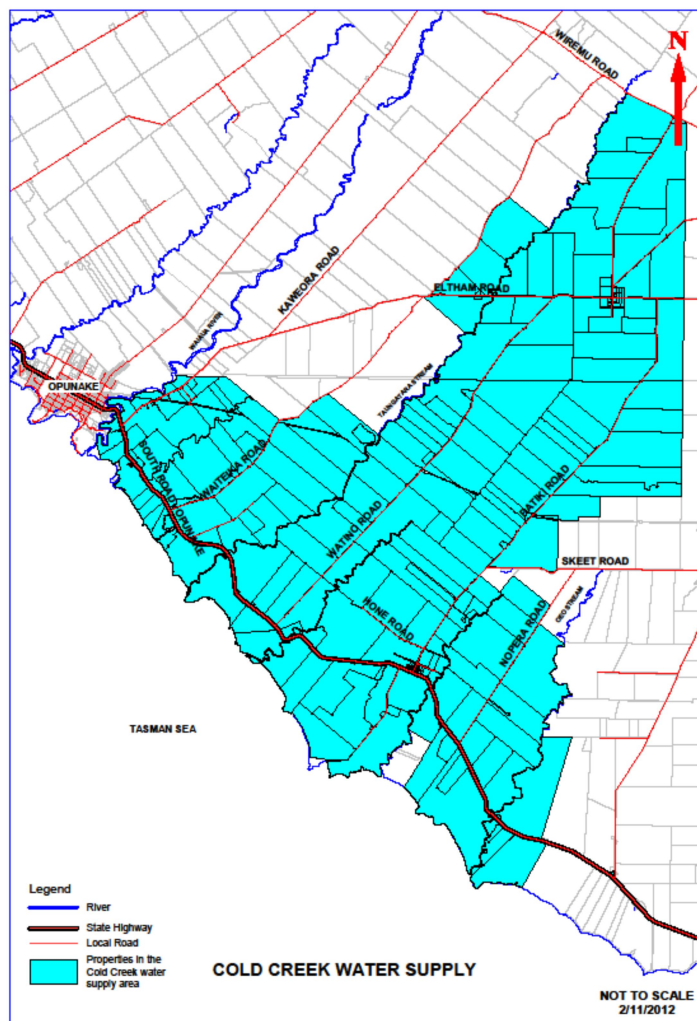
- (1) Subject to **subsections (2) to (4)**, the Registrar, on written application, is authorised on payment of the appropriate fee; to make such entries in the registers and do all such things as may be necessary to give effect to the transfer of the scheme to the Company. 10
- (2) Nothing in sections 40 to 42 of the Public Works Act 1981 applies to the transfer by the Council of any land or interest in land to the Company so long as the land or interest in land continues to be used for the purposes of the scheme. 15
- (3) However, if all or any part of the land or interest in the land is no longer required for the purposes of the scheme, sections 40 and 41 of the Public Works Act 1981 apply to the land or interest no longer so required as if the Company were the Council. 20
- (4) The Registrar must endorse on every computer freehold register transferred to the Company the effect of **subsections (2) and (3)**, when the land or interest in the land is transferred to the Company. 25
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Schedule 1 **s 4**
**Description of land on which Cold Creek
Community Water Supply treatment
plant situated**

Area	Description	Certificate of Title
1.4320 hectares	Lot 1 on DP 16088, being part Section 5 Block V Kaupokonui District	TN H4/479

Schedule 2
Map of scheme distribution area

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**South Taranaki District Council (Cold
Creek Rural Water Supply) Bill**

Legislative history

6 October 2011
21 March 2012

Introduction (Bill 338–1)
First reading and referral to Local Government and
Environment Committee
