

Tasman District Council (Waimea Water Augmentation Scheme) Bill

Local Bill

Explanatory note

General policy statement

Background

The Waimea River catchment has been under water demand pressure for some time and security of supply to urban and other consumptive users in the productive sector is constrained at times of low river flow. Matters came to a head in an extreme drought in 2001, which saw severe restrictions on water use but still resulted in unacceptable environmental consequences.

The Tasman District Council (the **Council**) settled on the Waimea Water Augmentation Scheme (the **Scheme**) after extensive consultation involving a collaborative group comprising the Nelson City Council, Fish and Game, iwi, the Department of Conservation, and water user representatives.

All necessary resource consents are in place, as are the necessary funding lines, including from the Council, the Crown, and irrigators as one of the categories of consumptive users. The benefits of the scheme include greater minimum flows in the Waimea River during summer, reduced salt water intrusion risk, and improved river health. It improves the security of water supplies for existing rural and urban users, enables a further 1200 hectares of irrigation on the Waimea Plains, and provides for growth in urban domestic water supplies.

The Scheme itself does not require parliamentary authority or approval. The Bill addresses 2 consequential matters relating to Crown land. They are—

- the transfer to the Council of 1.3516 hectares of riverbed on which the dam will be built, described as Section 1, Survey Office Plan 509793; and

- the right to inundate 9.6690 hectares of conservation land, described as Section 10, Survey Office Plan 509793, about 1.6 kilometres in a direct line upstream from the dam in the Mount Richmond State Forest Park (the **easement land**).

Riverbed land

The riverbed land is 1.3516 hectares of the bed of the Waimea River and is vested in the Crown. The land on either side of the riverbed, and on which the dam will be constructed, is vested in the Council, partly as legal road which will be stopped or otherwise dealt with by the Council.

The riverbed land is indistinguishable from the riverbed above and below it. At its greatest width where the dam is to be built, the river is about 25 metres wide. Photographs are on the Council's Internet site.

This Bill vests the riverbed land in the Council and dispenses with any need for marginal strips as they would be both impractical in the circumstances, and impossible, since the Council already owns the adjoining land.

As noted below, rights of first refusal (**RFRs**) under Treaty settlement legislation are suspended until the land returns to the Crown; but it must remain under direct or indirect control of the Council until that occurs.

These provisions protect RFR rights in a way similar to Treaty settlement legislation that allows RFR land to be transferred by the Crown to a council for a public work while preserving the underlying RFR right.

Should the dam not proceed, or be decommissioned, the riverbed land must be sold back to the Crown.

Easement land

The lake that would be created on the Lee River (which feeds into the Waimea River) will require the inundation of the easement land. The total area of the lake will be 87.5 hectares of which the portion covered by the easement is 11%.

The easement land is part of the bed, banks, and adjacent hill slopes of the Lee River, comprising about 2 300 metres of river at the northern end of the Mount Richmond State Forest Park about 5 kilometres south of the end of the formed part of Lee Valley Road. It comprises 0.006% of the 165,947 hectare Mount Richmond State Forest Park.

The easement land includes unvegetated river bed and open water (about 2.5 hectares). The riverbed also contains small areas of gorge flood-zone turf plant communities. The balance of the easement land (about 7.1 hectares) contains vertical bed rock or indigenous vegetation including whiteywood, kanuka, kowhai, and beech forest, the composition changing with aspect and altitude. Photographs are on the Council's Internet site.

The easement land is about 1 600 metres in a direct line from the dam that is to be part of the Scheme, but the topography of the area is such that the Scheme is not via-

ble unless the lake level can be sufficiently high that some inundation of the land will occur.

Options considered

It has not been possible to resolve issues so as to invoke processes under the Public Works Act 1981 to enable the riverbed land or the easement land to be acquired by the Council from the Crown.

Vesting of the riverbed land is considered appropriate because of the permanent nature of the structure and occupation of the land.

Other options have been considered for the easement land, including using a Local Bill to vest the easement land in the Council outright, or to create a local purpose reserve with the Council as the administering body, and with powers additional to those in the Reserves Act 1977 to enable the inundation of the easement land. Neither of those options is considered appropriate.

The Bill will enable the implementation of—

- the Environment Court consent order of August 2014 agreed to by the Council, the Department of Conservation, Fish and Game, and the Royal Forest and Bird Protection Society, which includes an extensive biodiversity offset compensation package; and
- funding agreements between the Ministry for the Environment and the Council and between the Council, Crown Irrigation Investments Limited, and Waimea Irrigation Limited.

General effect of the Bill

The Bill vests the riverbed land in the Council. There is an obligation to sell the land back to the Crown if the dam does not proceed or is removed.

The Council can transfer the land to the council-controlled organisation that will construct and operate the Scheme.

Easement land

The Bill also directly confers an inundation easement on the Council, and gives the Council the right to transfer the easement in due course to the council-controlled organisation that will construct and operate the Scheme.

To the extent that the land is not inundated at any time the public will have the same level of access as it does to the adjoining conservation land which is physically indistinguishable.

Affected iwi

There are 3 relevant Settlement Acts that confer acknowledgements over the Waimea, Wai Iti, and Wairoa Rivers and their tributaries, which include the Lee River.

The Ngāti Apa ki Te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014, the Ngāti Toa Rangitira Claims Settlement Act 2014, and the Ngāti Kōata,

Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014 create RFRs in favour of various parties.

The riverbed land suspends the RFR process until the riverbed land is transferred back to the Crown. In the meantime, the riverbed land can only be held by the Council or a council-controlled organisation that it controls.

The easement land is not disposed of in any way and RFRs are not triggered, but the inundation needs to be recognised as permanent in a practical sense. Ngāti Kōata are the iwi principally interested in the easement land, and agree that the inundation of the land, with the underlying land remaining in the conservation estate, is appropriate. Some land held by Ngāti Kōata will also be inundated by agreement under the authority of a different easement. Parliamentary assistance is not required for this.

General purpose statement

The Bill vests in the Council the riverbed under the dam that is part of the Scheme. The land is currently Crown land, and following transfer to the Council can only be transferred to a council-controlled organisation that it controls either alone or with other local authority. RFR Treaty rights are protected and, if the dam does not proceed or is decommissioned, the riverbed land must be transferred back to the Crown.

This Bill also confers on the Council, or the council-controlled organisation, an easement that gives it the right to inundate 9.6690 ha of the conservation estate so that the Scheme can proceed.

The topography of the area is such that without the inundation right the Scheme is not viable and cannot proceed.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 relates to commencement and provides that the Bill comes into force on the day after the date of Royal assent. The Bill will have gone through an extensive pre-introduction publicity phase and been considered by Parliament and the appropriate select committee.

The Scheme itself already has all necessary resource consents, and public and private sector funding.

The terms of the funding require the right to inundate the land to be confirmed. The Scheme needs to be in place as soon as possible to prevent further ecological damage to the Waimea catchment and reduce the need to restrict horticultural, farming, commercial, and residential water use beyond the current restriction levels. Measures are being put in place to avoid further water restrictions pending passage of this Bill.

Accordingly, the Bill comes into force on the day after the date on which it receives Royal Assent.

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

There are no marginal strips reserved. The Council already owns the land either side of the riverbed land, so that would not be possible. Nor is it desirable.

The Council can transfer the land to a council-controlled organisation controlled by it. The Council must pay the market value of the land.

If the Scheme does not proceed or is decommissioned, the Council or the council-controlled organisation must sell the riverbed land back to the Crown, which must pay the then market value for it.

The Crown's 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.

Clause 4 defines the terms Council, easement, easement land, riverbed land, and the Scheme. The land is defined in terms of survey plans that have been certified for parliamentary purposes.

Clause 5 vests the riverbed land in the Council and enables the Council to do either of the following:

- transfer the riverbed land to a council-controlled organisation that is controlled by the Council (either alone or together with any local authority);
- sell the riverbed land to the Crown or ensure that the council-controlled organisation does so, if the Scheme is not commissioned by 1 January 2020 or the Scheme is decommissioned.

Clause 6 confers on the Council an easement to inundate the land. The precise terms of the easement are set out in the *Schedule*.

Clause 7 requires the Registrar-General of Land to issue 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.

The Schedule sets out the terms of the easement.

Hon Dr Nick Smith

Tasman District Council (Waimea Water Augmentation Scheme) Bill

Local Bill

Contents

	Page
1 Title	1
2 Commencement	1
3 Purpose	1
4 Interpretation	2
5 Riverbed land	2
6 Grant and transfer of easement	3
7 Issue of title and registration of easement	3
Schedule	4
Terms of easement	

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** 5
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Purpose** 10
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

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) 5

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. 10

5 Riverbed land

- (1) The riverbed land is vested in the Council.
- (2) No marginal strips are reserved from the disposition of the riverbed land, despite section 24 of the Conservation Act 1987. 15
- (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 20
 - (b) sell the riverbed land to the Crown under **subsection (5)** or ensure that the council-controlled organisation does so, as appropriate, if—
 - (i) construction of the Scheme has not commenced by 1 January 2020; or 25
 - (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. 30
- (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 Kūia, and Rangitāne o Wairau Claims Settlement Act 2014: 35
 - (b) Ngati Toa Rangatira Claims Settlement Act 2014:

- (c) Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui 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. 5
- (2) The Council may transfer the easement 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.
- (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. 10
- (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. 15
- (5) The easement must be surrendered within 12 months after the Grantee permanently ceases to store water on the land in accordance with any statutory or regulatory consent.

7 Issue of title and registration of easement

- The Registrar-General of Land must— 20
- (a) issue a computer freehold register or record of title for the riverbed land in the name of the Council; and
- (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. 25

Schedule

Terms of easement

ss 4, 6

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 , 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.	10
1 Definitions	
In this Agreement, unless the context otherwise requires,—	15
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).	20
2 Water storage	
(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.	25
(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.	30
3 Shoreline works	
(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.	35

-
- (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 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** 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.
- 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. 25
- 8 Statutory and consent compliance**
- (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. 30
- (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.
- 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. 35

10 Assignment of rights

- (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. 5
- (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.

11 Variation 10

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

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. 15
- (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. 20