

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

Local Bill

Explanatory note

General policy statement

This Bill specifies a process for the South Taranaki District Council (the **Council**) to follow in order to authorise a transfer of the Cold Creek Rural Water Supply Scheme (the **scheme**) to the Cold Creek Community Water Supply Limited (the **Company**). It also provides for certain related matters if the scheme is transferred to the Company.

Background

Primarily, the scheme provides water for farming purposes. The water is also used for residential purposes. The scheme is registered as a drinking water supply on the Register of Community Drinking-Water Supplies in New Zealand (2006 Edition). The water for the scheme is sourced from the Cold Stream.

The scheme services approximately 162 connections and 400 people across an area covering 7,620 hectares in the Pihama/Te Kiri area of the South Taranaki district. The scheme was built between 1984 and 1987 and the construction of the scheme was overseen by the Cold Creek Rural Water Supply Committee of the Egmont County

Council. The committee comprised both Council members and local farmers.

The capital costs of the scheme were funded by a 50% subsidy from the Ministry of Works and Development, partly by farm users of the scheme and partly through overdrafts, bridging finance and loans provided by and through, the former Egmont County Council.

On 13 November 1984, pursuant to the provisions of section 377 of the Local Government Act 1974, the Egmont County Council resolved by way of special order that the area set out in the schedule to that resolution be constituted the “*Cold Creek Rural Water Supply Area and that the date of constitution be 18 December 1984*”. The special order was confirmed on 11 December 1984.

On 1 November 1989 the Egmont County Council was dissolved and its functions, assets and liabilities were transferred to the Council by virtue of the Local Government (Taranaki Region) Reorganisation Order 1989.

In the late 1990s, following requests from users of the scheme, the Council began to consider the possible divestment of the scheme to its users. This was in response to concerns from some users that future Councils may choose to corporatise or franchise the scheme. They wished to ensure that the water supply was retained for and controlled by, the scheme’s original beneficiaries.

In 1998, the Council obtained legal advice on a possible divestment under the Local Government Act 1974. In May 1999, the Council agreed in principle to instigate a process to divest ownership of the scheme, subject to resolving a number of issues concerning the divestment.

The Company was formed in 1998. The shareholders of the Company consist of the owners and occupiers of the land serviced by the scheme, and each shareholding is relating to landholdings or leasehold interests within the scheme area. One of the objectives of the Company as set out in its constitution is the acquisition and operation of the water supply systems from the Council to supply water to properties in the scheme area for the benefit of the users of the scheme.

In September/October 2000, the Council undertook a special consultative procedure on divesting the water supply to the Company and on 8 November 2000 resolved as follows:

That having considered the submissions to the proposal to divest the Cold Creek Rural Water Supply to Cold Creek Community Water Supply Limited, a duly incorporate company, the South Taranaki District Council confirms its intention to transfer ownership of the Cold Creek Rural Water Supply to Cold Creek Community Water Supply Limited; and

That the transfer of assets be effective from 1 December 2000.

However, a transfer was not effected by 1 December 2000 because the Council was unable to resolve certain taxation and other issues at the time.

In June 2002, the Council and the Company agreed that the scheme would be reconstituted as a water race area. Once constituted as a water race area, the Council could follow the process set out in Part 29A of the Local Government Act 1974 to divest the scheme to the Company. The Council and the Company entered into a Memorandum of Understanding to this effect.

However, because of the enactment of the Local Government Act 2002, the Council did not continue with this process. Subpart 2 of Part 7 (sections 130 to 136) of the Local Government Act 2002 came into force on 25 December 2002 and sets out various obligations and restrictions relating to the provision of water services. In section 124, water services is defined as meaning water supply and wastewater services. Water supply means the provision of drinking water to communities by network reticulation to the point of supply of each dwellinghouse and commercial premise to which drinking water is supplied.

Under section 130(2), a local government organisation (in this case the Council) must continue to provide water services and maintain its capability to meet its obligations under subpart 2. Section 130 also states that a local government organisation must not divest its ownership or other interest in a water service except to another local government organisation. Furthermore, a local government organisation must not lose control of, sell, or otherwise dispose of, the significant infrastructure necessary for providing water services in its district, unless in doing so it retains the capacity to meet its obligations.

However, sections 131 to 135 set out a specific process for the closure or transfer of a small water service. A small water service is one to which the water service is delivered to 200 or fewer persons (being persons who are ordinarily resident in the district).

Current situation

In terms of management of the scheme, the Company has been managing the scheme since 2001. However, there has been an informal arrangement between the Council and the Company so that the Council is effectively subcontracted to operate the treatment plant and the headworks for the scheme. The Council does not set and assess a rate for the operational costs of the scheme. The Company invoices the users of the scheme directly to meet the operational costs of the scheme. The users of the scheme are invoiced according to water usages as measured by water meters.

The operational costs of the scheme are in the main, met by the users of the scheme however the general ratepayers of both the former Egmont County Council and the South Taranaki District Council have subsidised the true cost of the scheme since its inception. This subsidy has been in the form of low or nil charges for engineering, administration, and Water Treatment Operators.

It is noted that in 2010, a public health risk management plan for the scheme was approved by the District Health Board. The public health risk management plan was prepared by the Council with the involvement of the Company.

In 2006, the Company approached the Council again with a view to discussing the ownership of the scheme. The Council and the Company entered into further discussions and this culminated in the following statement in the Council's Long-Term Council Community Plan *Future South Taranaki 2006–2016*:

The consumers of Cold Creek and Nukumarū water supplies are not charged for their water consumption by the Council. The Cold Creek Scheme is managed by the Cold Creek Community Water Supply Limited and the Nukumarū scheme by a local consumer committee. The ownership of the Cold Creek water supply has been under discussion for several years following an approach by the consumers to divest the scheme to them. The Council intends to finalise the issue of ownership of the Cold Creek rural water supply and address the future

management of the assets of both schemes during the 2006/07 year.

The Council has further considered the issue of ownership and the effect of the Local Government Act 2002 and the Health Act 1956. Having taken additional legal advice, the Council considers that the best option to resolve the ownership issue is to promote this local bill that specifies a procedure to authorise the transfer of the scheme to the Company. At a meeting of the Council on 11 December 2006, the Council resolved as follows:

That the South Taranaki District Council re-affirms its intention to pursue the divestment of the Cold Creek Water Supply to the Cold Creek Community Water Supply Company Limited

...

That ... Council officers are instructed to pursue a Local Bill to provide a process for the divestment of the Cold Creek Water Supply.

Consequently, the reasons for promoting this Bill are that—

- the Council desires to transfer the scheme to the Company; and
- the Council believes that the users of the scheme are highly desirous of owning the scheme through the Company; and
- the Council, the Company, and the users of the scheme consider that the current ownership arrangements are unsatisfactory in light of the present management and operation of the scheme and the way in which the capital costs were originally funded; and
- it is highly questionable whether the Council could divest ownership of the scheme to the Company under the Local Government Act 2002. The Local Government Act 2002 only authorises the divestment of a water service if it delivers water to 200 or fewer persons who are ordinarily resident in that area. This would not apply to the scheme as it has 162 connections and it delivers water to 400 people within the area. It therefore does not qualify as a small water service; and
- a local bill that relates only to the scheme will enable the Council, the Company, and the users of the scheme to be assured of the legality of the ownership arrangements.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill will, if enacted, come into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

Clause 3 states the Bill's purpose.

Clause 4 is the interpretation clause. It defines various terms used in the Bill.

Part 2

Process for obtaining authorisation to transfer scheme

Part 2 of the Bill sets out the transfer process. This part largely follows sections 131 to 135 of the Local Government Act 2002 with some variations to take into account the nature and size of the scheme.

Clause 5 requires the Council to follow a particular process in order to transfer the scheme to the Company. The process requires the Council to consult with the Medical Officer of Health, make certain documents and views publicly available in a balanced and timely manner, and conduct a referendum using the First Past the Post electoral system.

Clause 6 provides that the Council is responsible for conducting the referendum. The Local Electoral Act 2001 applies to the conduct of the referendum.

Clause 7 sets out the eligibility requirements that a person must meet in order to vote in the referendum.

Clause 8 deals with the various plans and assessments that must be prepared by the Company to the satisfaction of the Council. This includes—

- a transfer plan;
- 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:

- an assessment of 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;
- an assessment of the ability of the Company to maintain and operate the scheme satisfactorily for a period of 30 years from the proposed date the scheme is to be transferred to the Company.

Clause 9 sets out the specifics of the transfer plan.

Part 3

Matters relating to transfer of scheme

Clause 10 provides that Part 3 of the Bill applies if the Council transfers the scheme to the Company.

Clause 11 states that certain matters are not affected by the transfer of the scheme. For instance, the transfer of the scheme to the Company does not constitute a breach of contract.

Clause 12 provides that the Council is not required to include the scheme in any assessment under section 125 of the Local Government Act 2002. Subpart 2 of Part 7 of the Local Government Act 2002 will also not apply to the scheme.

Clause 13 clarifies the application of the Health Act 1956 in relation to the scheme. If the scheme is transferred to the Company, the Council is exempt from any or all duties imposed on it by Part 2 of the Health Act 1956 as those duties relate to the scheme. It will also be 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.

Clause 14 is the taxation and duties provision and provides that the transfer of the scheme from the Council to the Company—

- is, for the purposes of the Goods and Services Tax Act 1985, a transfer of part of a taxable activity as a going concern that is capable of separate operation; and
- is not, for the purposes of the Estate and Gift Duties Act 1968, a disposition of property.

Clause 15 deals with the transfer of land to the Company and requires the Registrar-General of Land to make such entries in the registers as is necessary to give effect to the transfer of the scheme.

Chester Burrows

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

Local Bill

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**Description of land on which Cold Creek Community
Water Supply treatment plant situated**

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

Part 1
Preliminary provisions

- 3 Purpose**
The purpose of this Act is— 10
- (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
 - (b) to provide for certain related matters if the scheme is transferred to the Company. 15
- 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
- Registrar** means the Registrar-General of Land
- 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—

- (a) the intake structure:
- (b) the treatment plant: 5
- (c) the land on which the treatment plant is situated, being the land described in the Schedule:
- (d) the in-ground covered reservoir:
- (e) two waste discharge ponds:
- (f) the pipes and pressure reducing valves: 10
- (g) other valves and supply point connections:
- (h) all water meters for the scheme:
- (i) the electronic control and monitoring equipment:
- (j) land use consent 5554 (to erect and maintain an intake structure): 15
- (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).

Part 2 20

Process for obtaining authorisation to transfer scheme

5 Council to follow transfer process

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 25
- (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
 - (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 30
 - (iii) the assessments made by the Company under **section 8**; and 35

- (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**. 5

6 Responsibility for conduct of referendum

- (1) The Council is responsible for conducting the referendum under **section 5(c)**.
- (2) The electoral officer of the Council must prepare a special roll of the persons eligible to vote under **section 7**. 10
- (3) The provisions of the Local Electoral Act 2001 apply, with any necessary modifications, to the conduct of the referendum under **section 5(c)**.

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— 15

- (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 20
- (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. 25

8 Requirements for plans and assessments

The Company must, to the Council’s satisfaction,—

- (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 35

- period of 30 years from the proposed date the scheme is to be transferred to the Company; and
- (d) assess the ability of the Company to maintain and operate the scheme satisfactorily for a period of 30 years from the proposed date the scheme is to be transferred to the Company. 5

9 Transfer plan

The transfer plan must contain the following:

- (a) a plan of the scheme; and
- (b) a description of the land or property which is served by the scheme; and 10
- (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
- (d) any rights conferred by designations under the district plan applying to any land relating to the scheme; and 15
- (e) any rules in the regional plan relating to the scheme.

Part 3

Matters relating to transfer of scheme

10 Application of Part 20

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

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 25
- (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 30

- (d) does not release any surety or guarantor wholly or in part from any obligation with respect to the scheme; and
- (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. 5
- (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,— 10
 - (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 15
 - (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.
- (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. 20

14 Taxation and duties provision

- (1) For the purposes of the Goods and Services Tax 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. 25
- (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. 30

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.

- (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. 5
 - (3) However, if all or any part of the land or interest in 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. 10
 - (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 land is transferred to the Company.
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Schedule

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**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