Ōpōtiki District Council
STRONG COMMUNITY STRONG FUTURE

Whakatōhea Māori Trust Board

TE RUNANGA O TE WHANAU

Our Ref: A296465

21 July 2022

SUBMISSION TO THE FINANCE AND EXPENDITURE COMMITTEE ON THE WATER SERVICES ENTITY BILL

Council has been heavily engaged in the Three Waters Reform process over the last 12 months reviewing the large body of information made available by the Department of Internal Affairs (DIA), National Transition Unit, Local Government New Zealand, councils, and independent advice to make an informed assessment of the proposed reform and how it would impact our community, today and into the future. Community consultation was undertaken during this period to help inform our position.

Based on our assessment of the proposed Three Waters Reform model and the Water Services Entity Bill (the Bill) we make this submission opposing the Bill. Ōpōtiki District Council, Whakatōhea, Te Whānau-ā-Apanui and Ngai Tai are unanimous in this decision and our submission is made on behalf of the Ōpōtiki Community.

On 28 September 2021 council and Iwi, in response to the eight-week consultation period provided by Department of Internal Affairs, expressed similar concerns with the proposed Three Waters Reform and unanimously opposed them then as we still do.

We are disappointed that the bill does not adequately address our concerns, and the concerns of many others. Further there is little recognition of the community, community voice or the rights of the community to have their say within the bill, which are key issues at the heart of the reform.

This reform, in conjunction with the RMA reforms, the civil defence reforms, and the waste reforms potentially have some significant impacts on Local Government that we consider government should be addressing first and should be transparent about. These reforms have been labelled by some as a trojan horse for other agenda's and we feel this may be true. As a district that is often badly impacted by changes form the centre designed as "one size fits all" we can point to many changes over the years that have eroded our community bit by bit.

We do acknowledge that the government has made some attempts to address our circumstances via the PGF but we feel the agenda of regulatory centralisation is working against the intended benefits of the projects we are undertaking to restore our socio economic circumstances and local identity.

The submission provided by the Communities for Local Government echoes our concerns with the reform including the flawed assumptions that underpin the current reform model. We strongly recommend that the reform model currently proposed is rejected and a new model developed that includes the ability for bespoke models to be developed with respective councils.

The attachment outlines some of the specific issues we have identified with the Bill;

Yours faithfully

Lyn Riesterer
MAYOR OF ŌPŌTIKI

Robert Edwards
CHAIR, WHAKATŌHEA MAORI TRUST BOARD

Rikirangi Gage
CHIEF EXECUTIVE, TE RŪNANGA O TE WHĀNAU TRUST

SUBMISSION POINTS

Te Tiriti o Waitangi and Te Mana o te Wai

Treaty of Waitangi and Te Mana o te Wai - we support the Government's initiative to strengthen links to the treaty within the Bill. It is important however that the needs of individual Iwi / hāpu are not lost in the centralised model proposed by the government. It is important that Mana to Mana relationships and an understanding of Te Mana o te Wai at a Iwi and hāpu level is maintained.

Legal Form

The Bill defines the service area for each entity through reference to territorial authority districts, or parts of districts.

The service area defined in the bill, in which Ōpōtiki District Council is included, covers an area which includes 22 Territorial Authorities. The service area is defined as the *Western-Central Water Services Entity*. The area has an estimated 800,000 customers (DIA 2021), and the population of Ōpōtiki District, as per the 2021 infometrics regional profile, is 10,300 and equates to approximately 1.3% of the customers within of the Western-Central Water Services Entity. The size and centralised framework of the service area proposed by the bill will dilute localism and directly impact relationship building within our rohe. Mana to Mana relationships between council, as a water authority, and Iwi are maintained and are vitally important to build repour and strengthen relationships that deliver positive outcomes for the community. The legal form proposed directly impacts our relationships by reducing the ability to be involved in local decision making and maintaining Mana to Mana discussions with Hāpu, Iwi and Council in relation to water services or projects that are enabled by water services. We strongly oppose the size of the service entities proposed in the bill because it erodes localism and will negatively impact the ability to maintain Mana to Mana relationships, locally.

The regional representative group, which includes representatives of territorial authorities (TA's) and mana whenua, is not seen as appropriate to overcome this issue due to the lack of local representation (12-14 representatives in total across the service area). The Regional Advisory Panels, that are proposed, are purely advisory in nature and limited in their ability to make change. Hence we do not see these are an effective measure to resolve local issues and maintain Mana to Mana relationships.

Ownership and Ownership Rights

Part 2 15(2)(a) indicates a water service entity is co-owned by the TA's within the service area, however the bill limits the power of "owners" to no direct control over the entity or assets managed by the entity. This view is further supported by other councils and the current high court case which is in progress, challenging the crowns position over ownership rights. We totally oppose the ownership model and council, as current owners of these assets, should be afforded more rights to influence the provision and service these assets provide within our rohe.

Part 2 cl15 outlines a shareholding model. However, this is a very limited form of shareholding and only vests the right to vote if or when a proposal to dispose of an entity is tabled. It is also evident that there is no real benefit in holding more than one share because for a proposal to dispose of an entity to pass, it requires 100% of shareholders agreement. Therefore, there is no additional value gained by holding more than one share. Any shareholder can veto the proposal whether they have one or eight shares for example. This further supports the lack of actual ownership rights afforded to TA's and is seen as a token notion that has no real owners benefit.

Part 3 cl115 further supports this view with the clause identifying that TA's and the regional representative group cannot direct a water services entity or a board member. As an owner it is unusual to not be vested such authority. The entities are body corporates who will have the ability to control our assets. Therefore, it is our belief that the bill enables community assets to be transferred to a body corporate with no compensation to the current owners, the council and community. This is not a fair process.

Governance arrangement

'Water services entities will have a 2-tier governance arrangement comprising—

- *a regional representative group, which provides joint oversight of an entity by an equal number of representatives of the territorial authority owners and mana whenua from within the entity's service area; and*
- *corporate governance by an independent, competency-based, professional board.'*

The 2-tier governance arrangement proposed in the bill will limit the ability to be agile and quickly adjust Asset Management Plans and capital works priorities which overcome any emerging issues, particularly

those associated with enabling growth or economic development. A streamlined approach which connects directly with local statements of community outcomes and provides an avenue for agile decision making, when needed, must be incorporated within the framework.

The concern is that local issues which can be addressed through reprioritising capital works plans or asset management plans, would need to be directed through a regional advisory panel, or to a regional representative group for discussion and subsequent approval by the board. It will slow the process and result in lost productivity or an outcome that is not supported locally. Also, it will be difficult to inform the decision-making process as there will be a disconnect to place at a local level due to the centralised approach. Mana to mana relationships and a local understanding of the interconnected nature of decision making is needed to ensure positive outcomes for the local community.

Regional representative group

Part 2 cl27 indicates there are only six-seven local government representatives and six-seven mana whenua representatives proposed on the regional representative group which consists of 22 TAs and 70 plus Iwi. We totally oppose this governance model as it is too far removed from local issues and local decision making and does not support local representation or the ability to maintain Mana to Mana relationships. There is also no indication that there will be an even spread of representation across the entity service area. For example, there should be even representation from small rural councils, regional and metro councils. Similarly with mana whenua. Further our three Iwi partners do not support other Iwi setting the strategic direction of how a water entity will operate within their whenua, as defined in Part 2 cl 28.

Further, Part 2 cl 29 relates to the collective duty of the regional representative group, being their duty must be undertaken wholly or mostly for the benefit of all communities in the entity service area. With such a large area and diverse range of stakeholders how will this be practically implemented? Regional representatives who are not from areas of which they reside will have little knowledge of the stories and challenges faced locally and how they compare with other areas, therefore how will this requirement be achieved? Also as noted earlier Ōpōtiki makes up approximately 1.3% of the Western-Central Water Services Entity population. How would an issue that is important to Ōpōtiki residents ever be prioritised when it is grouped into the whole, particularly if it is unique to the community. Locally led initiatives and bespoke governance and delivery models that retain local voice, must be developed. Although there is

a provision for Regional Panels, these are not mandatory. This should be a minimum as they would at least provide more localised advice and influence
responsiveness for regions within the entity service area, however these also are not considered to go far enough.

Appointment of Regional Representatives

Part 2 cl 32 & 33 outlines the method of selecting representatives to the regional representative group, being through appointments made by the respective TA's and mana whenua themselves. This does not seem practical, and it will be difficult to agree on who will represent TA's and mana whenua. Clear guidelines need to be articulated to confirm how disputes will be managed otherwise small councils and Iwi will be left out. There are 22 TA's and over 70 Iwi within the *Western-Central Water Services Entity* to help give context to the issue. There are no clear guidelines around how disputes associated to the selection of representatives will be managed. This needs to be clearly articulated to ensure a fair and transparent process is followed. There is a section on disputes within the bill, however this relates to managing disputes following the appointment of regional representatives.

Appointment of Board Members

Part 2 cl 57(2) (b) includes a key qualification/skill must include *network infrastructure industries*. This should be limited to Three Waters as they are distinctly different to other network industries. Three Waters networks have strong links to public health, wellbeing, and environment and as such this network infrastructure should be specific to Three Waters networks. Also, there should be an additional criteria that includes engagement and communication. This is a highly important skill to ensure effective engagement methods are developed.

Part 2 cl 60 – public board meetings. This clause outlines the requirement for the board to hold two public board meetings each year. However, there is no indication of the location or if these meetings will rotate location to ensure equal access opportunities for the public to attend. Due to the large geographic area of the entities and the high cost of commuting, there is a risk that only the public who reside close to the location of the meeting will be able to attend. There should be provision in the bill that ensures such meetings rotate throughout the entity service area to enable more opportunity for the public across the entity to attend.

Joint Arrangements

Part 3 cl 118(4) joint arrangements – one concern of the reform is the ability for small councils, like Ōpōtiki, to attract and retain skilled professionals to Ōpōtiki and council. The district is on the cusp of positive change with the development of the harbour and council needs to ensure it has a critical mass of skilled resources to effectively manage the residual functions such as roading, harbour operations, waste management and project management. This clause is seen as a favourable condition which could give flexibility, such as a joint arrangement with council to deliver services using the same resource to benefit of the community. For example, currently one council engineer will travel over an hour along SH35 to insect Three Waters assets, road assets and waste assets. With the proposed new model two separate resources would be needed to deliver the same service, e.g. one to inspect council assets and one to inspect entity assets, which would be a disappointing outcome. A joint arrangement should be provided as an option for small councils such at Ōpōtiki to help overcome this issue.

Subpart 4 – Reporting Obligations

The extent of planning and reporting articulated within subpart 4 is at a high level and there needs to be a commitment to plan and report at a local level so there is transparency in accountability for performance at a local level. There is no reference in subpart 4 that planning, and reporting needs to be detailed to a local level and there is a risk that if reported at a higher level, poor performance in one TA would be lost or diluted when rolled up to the entity or even regional level. At a minimum there should be a requirement in the bill for the entity to plan and report at a TA level. This needs to be added to subpart 4.

Asset Management Plan

Part 4 cl 147 - Board must prepare an Asset Management Plan (AMP). The AMP is considered an essential document in determining investment priorities within each TA. One of the key benefits of an AMP is to outline how Three Waters will be delivered locally and as such local input and local data is critical. There is no indication of the requirement for the AMPs to be at a local level. If the plan is developed at an Entity level there is a high risk that small councils and Iwi will not be heard or fairly represented within the plan at a local level. There is also no indication that local preferences will be considered or incorporated within the AMP. This is of concern as our expectation is that local preferences and local priorities are included within an AMP.

Further, AMPs are technical in nature and often lengthy documents. Noting that there are 22 TA's within the Western-Central Water Services Entity it will be difficult to effectively engage with key stakeholders as the document will likely be very detailed and long. Some key areas of interest for the community include Levels of Service (LOS) and future capital works. An explanation on how this document will be used for effective engagement needs to be outlined. Communities should have input into the level of service offered locally and not at an entity level.

There is expectation, as outlined in the bill Schedule 3 Part 2, that TA's provide input into the AMPs. This would suggest that there should be a level of competency with the TA's to provide meaningful input into a Three Waters AMP. However how will this be achieved if these resources are moved to the entities themselves?

Funding and Pricing Plan

Part 4 cl 150 -Board must prepare funding and pricing plan. Ōpōtiki District is one of the most deprived communities within New Zealand and ensuring an affordable pricing plan is developed is very important. The advantage with the current model, TA'a managing Three Waters, is that they also have oversight and control over most targeted and general rates that each resident is expected to pay for services. This allows councils to consider the pricing plan more effectively against the community's ability to pay. How will this be maintained if a large part of the overall rate, being Three Waters, is removed from the council and managed in isolation by a water entity? There must be a link between the council and entity to ensure overall rates are maintained at an affordable level and include priority for deprived areas and methods to manage the risk of rates being unaffordable for the community. This should include the provision of cross subsidy, grants for major projects or possible rates remissions.

Regional Council rates and the ability to pay should also be considered within this section.

There needs to be provision included in the Bill for managing high deprivation areas within each entity and affordability, particularly when this is one of the main drivers for the reform, bringing down costs to the ratepayer.

Infrastructure Strategy

Part 4 cl 153 - Board must prepare and adopt Infrastructure Strategy. It is recommended this be reviewed too and changed to an Integrated Water Cycle Management Strategy. An Integrated Water Cycle Management Strategy (IWCM), which includes a 30-year financial plan and total asset management plan, is a bottom-up approach to informing best practice management of three waters, for the community today and into the future. The strategy also effectively links the AMP and Financial Plan to the strategy. The strategy development includes an issues paper, options assessment, and a quadruple bottom line assessment of the options confirming the preferred pathway. This is a transparent and evidence-based approach which is considered highly effective and sustainable, as it ensures targeted investment and full cost recovery.

Financial independence

Part 4 cl 166 – financial independence – this clause clearly outlines the limitation of what a TA, as an owner, has rights to. This is not supported as "owners" should have owner rights.

Government Policy Statement

There is no indication of government funding support and no obligation for the government to fund anything. This is of concern particularly when referencing the comment in the Rating Agency S&P Global letter released by DIA. The letter outlines an assumption that "there is an 'extremely high' likelihood that the New Zealand sovereign will provide timely support to WSEs if they were in financial distress". Provision in the GPS should be included noting this advice and occurrences such as Air NZ, where the government provided financial assistance when the corporation was in financial difficulties.

Consumer forum

Part 6 cl 203 the establishment of a consumer forum is good to ensure customers have an avenue to express concerns. However, the only requirement is for the entity to develop one forum. There should be more details around how these will be formed and to what level they should be formed. A range of forums should be available to consumers.

Interpretation – infrastructure assets

Schedule 1 - What is the definition of a proposed asset? Does this indicate that any future assets, as articulated in a TA's LTP are "proposed assets"?

Duties of local government organisations

Schedule 1 cl5 (2) and cl 11 – These clauses outline the duties of TA's to comply with requests for information or resources to assist with the transition activities. Unlike larger TA's Ōpōtiki has limited resources and as such what is considered a "reasonable" request by others may not by Ōpōtiki. It will not be considered reasonable if the request either impacts our ability to deliver business as usual (BAU) services to our community or puts undue pressure and stress on our staff. Therefore what is considered "reasonable" can only be determined by the TA when such a request is made under these clauses. The wellbeing of staff and the ability to deliver BAU to our community must be factored into the assessment of what is reasonable. This is very important considering cl13 provides the Chief executive of department the power to issue direction of non-compliance.

Transition Provisions Relating To Employment

In general, the provisions provided in the bill for staff are seen as favourable however these are a couple of points of concern. The reform has increased uncertainty within the sector and as such it is important that, wherever possible, uncertainty is removed. To help improve certainty there should be clear definitions for the following terms which are used in Schedule 1 Subpart 3:

- Primarily undertakes functions that will be transferred to a water services entity
- Senior management role
- Reasonable travel distance

These definitions play an important role in determining if a position will be transferred to the entity and what the impact of a possible change in location, in terms of travel distance, might have on staff transferring to the entity. These issues have been raised by staff.

As raised earlier there is a significant risk, to council, that with the transfer of skilled staff to the entity there will be a skills shortage, particularly for smaller councils, to deliver critical functions such as Roading, Waste Management, Harbour Operations, Asset Management and Project Management.

Oversight Powers of Department

Subpart 4 outlines the oversight powers of the department during the transition phase. This includes the provision for local government organisations to provide the department with information about an intended decision, and to obtain written response from the department that the decision is confirmed prior to implementation. It is noted that this applies to any decision that significantly prejudices the

water services reform, significantly constrains the powers or capacity of the water services entities following the reform or has a significant negative impact on the assets or liabilities. There is no definition of significant, therefore this section is subjective to what represents significant and requires department confirmation and what does not. Our interpretation, based on the size of Ōpōtiki and the size of the proposed entity, no decision by ŌDC will be significant.