

DRAFT FOR CONSULTATION

Gore District Council (Otama Rural Water Supply) Bill

Local Bill

Explanatory note

General policy statement

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

Background

The scheme was built in the early 1970s following a series of meetings of farmers in the community who considered that the supply and reticulation of water on the farms would be of great assistance to stock management and health.

The costs of the scheme were met by contributions in cash and labour from farm users of the scheme, a subsidy from central government, and a loan raised by the former Southland County Council.

The scheme is governed by the Otama Rural Water Supply Committee (the **Committee**), which comprises 7 users appointed by other users of the scheme, as well as a councillor elected for the Waikaka Ward.

The scheme is still primarily used for stock, but also services an estimated 223 dwellings that are likely to use it for drinking-water purposes. The water is untreated but will shortly be chlorinated.

Current situation

The ownership of the scheme has historically been unclear but the Council considers that it currently has legal responsibility for the scheme.

The Committee has governed the operation of the scheme on behalf of the users since it was established. The day-to-day operation and maintenance of the scheme, however, is undertaken by the Council, including all administrative duties, field work, tech-

nical advice and reporting to the Committee. The cost of the maintenance and operations of the scheme is met by the Committee from fees paid by users.

Following a public meeting in May 2017, a preliminary referendum was held and the users of the scheme overwhelmingly voted for the ownership of the scheme to be transferred from the Council to the Committee. There was a 75% voter turnout, and of the 294 voters, 223 (almost 76%) voted in support of the ownership of the scheme being transferred to a new company where the users are the shareholders.

As a result of the referendum, the Council confirmed that it supports the users of the scheme taking over ownership of the scheme.

As part of the transfer process set out in the draft Bill, the Council and the Committee are currently developing a water safety plan and have undertaken a catchment risk assessment, which found that there is a potential risk to the water supply.

There are currently no issues with the water itself. However, in light of the findings of the Havelock North Drinking Water Inquiry, the Council has now issued a permanent boiled water notice (**PBWN**) for the scheme until a more permanent solution can be found. Plans for permanently disinfecting the water are now in progress. The scheme has funds in reserve to pay for chlorination.

The Committee is fully committed to ensuring the safety of users and complying with all of its public health and other legal obligations.

Reasons for local Bill

Under section 130(2) of the Local Government Act 2002 (the **Act**), a local government organisation (in this case, the Council) must continue to provide water services and maintain its capability to meet its obligations relating to the provision of water services. Section 130 of the Act 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.

Sections 131 to 135 of the Act 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).

Purpose of Bill and reasons for promoting Bill

The purpose of this Bill is to provide a process whereby the scheme can be transferred to the users of the scheme, despite section 130 of the Act.

The reasons for promoting this Bill are as follows:

- 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:

- the users have each made a significant contribution to the scheme since it was established, and have continued to cover the cost of any maintenance or upgrades to the scheme since then:
- the users would like the scheme transferred to them so that they can ensure that the scheme continues to meet their needs and remains cost-effective:
- the scheme has always been governed by the Committee which has operated largely independently of the Council. All parties, including the Council, the Committee, and the users have operated on the understanding that the Council has administered the scheme on behalf of the users:
- despite some lack of clarity regarding the ownership of the scheme, the Council considers that it is the owner of the scheme. That being the case, the Council cannot divest ownership of the scheme to the Company under the Act. The Act 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 services an estimated 223 dwellings that are likely to use it for drinking-water purposes. It therefore does not qualify as a small water service:
- 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:
- the Council has acknowledged the rights of users in respect of other rural water supply schemes in the area (ie, the Kaiwera and Otikerama Rural Water Supply schemes) by facilitating the transfer of these schemes to users for nominal consideration (\$1):
- there is precedent for a local Bill such as this. The South Taranaki District Council (Cold Creek Rural Water Supply) Act 2013 (the **Cold Creek Act**) was passed for the same purpose.

Form of local Bill

This Bill has been drafted using the Cold Creek Act as a precedent. The Cold Creek Act was passed to enable the transfer of the Cold Creek Water Supply Scheme to Cold Creek Community Water Supply Limited (a company owned by the users), despite section 130 of the Act.

As with the Cold Creek Act, this Bill broadly provides for the process set out in the Act for the transfer of a small water service (sections 131 to 135), with some variations to take into account the nature and size of the scheme.

Neither the Cold Creek Water Supply Scheme nor the Otama Rural Water Supply scheme is a small water service. The inclusion of these provisions, however, is to ensure that there is majority support for the proposed transfer among those directly

affected by the scheme and sufficient information available in respect of the impact of the transfer.

The Committee has consulted local iwi through the Hokonui Rūnanga. The Rūnanga has confirmed in writing its support for the transfer.

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 purpose of the Bill.

Clause 4 is the interpretation clause, defining 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 to obtain goods and services for maintaining and operating the scheme:
- an assessment of the likely future capital and operating costs to maintain and operate the scheme for 30 years:
- an assessment of the Company's ability to maintain and operate the scheme satisfactorily for 30 years, including an assessment of the Company's ability and

commitment relating to any property that is transferred or leased to someone else.

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 Subpart 2 of Part 7 of the Local Government Act 2002 will not apply to the scheme.

Clause 13 provides that the Southland Regional Council must be notified once the scheme has been transferred to the Company.

Clause 14 concerns taxation and duties 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.

Schedules

There are 2 schedules, as follows:

- *Schedule 1* describes the land on which the Otama Rural Water Supply treatment plan is situated;
- *Schedule 2* contains a map of the distribution area of the scheme.

Mark Patterson

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Contents

	Page
1 Title	2
2 Commencement	2
Part 1	
Preliminary provisions	
3 Purpose	2
4 Interpretation	2
Part 2	
Process for obtaining authorisation to transfer scheme	
5 Council to follow transfer process	3
6 Responsibility for conduct of referendum	3
7 Eligibility to vote in referendum	4
8 Requirements for plans and assessments	4
9 Transfer plan	4
Part 3	
Matters relating to transfer of scheme	
10 Application of Part	5
11 Certain matters not affected by transfer of scheme	5
12 Application of Local Government Act 2002	5
13 Southland Regional Council to be advised of transfer	5
14 Taxation and duties provision	6
15 Transfer of land	6
Schedule 1	
Description of land on which Otama Rural Water Supply scheme treatment plant situated	

Schedule 2
Map of scheme distribution area

8

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Gore District Council (Otama Rural Water Supply) Act **2018**.

2 Commencement

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

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is—

- (a) to specify the process that the Gore District Council must follow to authorise a transfer of the Otama Rural Water Supply scheme to Otama Rural Water Limited; and
- (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 Otama Rural Water Limited

Council means the Gore District Council

Registrar means the Registrar-General of Land

scheme means the Otama Rural Water Supply scheme that is vested in the Council, and includes the scheme assets

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
- (b) includes the following plant and land:
 - (i) the land described in **Schedule 1**;
 - (ii) the Pyramid well;
 - (iii) the Pyramid pump station;
 - (iv) all reservoirs associated with the scheme;
 - (v) all pump stations associated with the scheme;

- (vi) all break tanks associated with the scheme;
 - (vii) all gravity and pressure mains associated with the scheme (up to the point of supply);
 - (viii) all valves and supply point connections;
 - (ix) all water meters;
 - (x) the electronic control and monitoring equipment installed specifically to monitor the scheme infrastructure; and
- (c) includes the resource consent granted under the Resource Management Act 1991: Water Permit 202102 (to take up to 2 600 cubic metres per day of surface water from a bore for the Otama Water Supply scheme

scheme distribution area means the area coloured blue on the map set out in **Schedule 2**.

Part 2

Process for obtaining authorisation to transfer scheme

5 Council to follow transfer process

- (1) The Council must transfer the scheme to the Company if—
- (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**.
- (2) The Council complies with this subsection if—
- (a) the Council has consulted the Medical Officer of Health for the district about the proposed transfer; and
 - (b) the Council has made publicly available, in a timely and balanced 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
 - (iii) the assessments made by the Company under **section 8**.

6 Responsibility for conduct of referendum

- (1) The Council is responsible for conducting the referendum under **section 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(1)(b)**.

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—

- (a) a residential elector under section 23 of the Local Electoral Act 2001 whose address for registration as a parliamentary elector is a property—
 - (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 whose property, for the purposes of section 24(1)(a) or (b) of that Act, is a property—
 - (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,—
 - (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
 - (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 on which 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 on which the scheme is to be transferred to the Company.
- (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.

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 that is 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
- (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.

Part 3

Matters relating to transfer of scheme

10 Application of Part

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
- (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
- (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

Subpart 2 of Part 7 of the Local Government Act 2002 does not apply to the scheme.

13 Southland Regional Council to be advised of transfer

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

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.
- (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 any entries in the registers and do any things that 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.
- (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.
- (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.

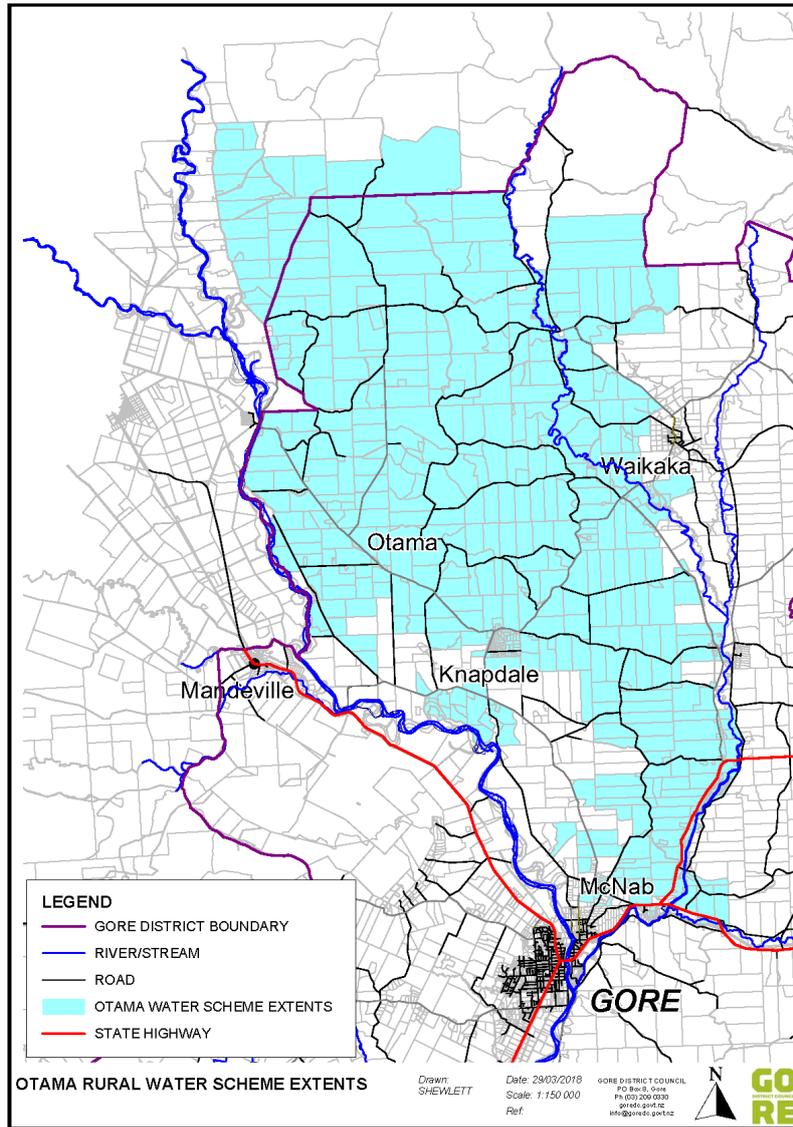
Schedule 1
Description of land on which Otama Rural Water Supply scheme
treatment plant situated

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Area	Description	Computer freehold register
0.2372 hectares more or less	<i>Southland Land District</i> Lot 1 DP 384474	Computer freehold register 337851

Schedule 2 Map of scheme distribution area

s 4



All care has been taken in creating this information but Gore District Council accepts no responsibility for its accuracy or content.