Submission on:

Water Services Legislation Bill and

Water Services Economic Efficiency and Consumer Protection Bill

February 2023

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INTRODUCTION AND SCOPE OF SUBMISSION

1 This submission is made by the Tūwharetoa Māori Trust Board (**Trust Board**) on the Water Services Legislation Bill (**WSL Bill**) and Water Services Economic Efficiency and Consumer Protection Bill (**EECP Bill**).

2 Where this submission:

a. Includes request for retention or amendment of a provision of the WSL and the EECP Bills, the request incorporates consequential amendments necessary to give effect to its intent.

b. Proposes alternative drafting, new text is underlined and proposed deletions to current text are shown in strikethrough.

3 The Trust Board has been assisted in the development of our submission by analysis completed by the Freshwater Iwi Leaders Group, including a template submission that was prepared by their technicians.

4 Importantly, the Trust Board wishes to make it clear that this submission does not comprise an exhaustive statement of all the issues of concern to Ngāti Tūwharetoa in relation to the WSL or EECP Bills or the Three Waters reforms more generally. In particular:

a. The Trust Board wishes to record its disappointment at the Crown's failure to consider and address the Waikato River settlement framework, including Te Ture Whaimana - the Vision and Strategy for the Waikato River (Te Ture Whaimana), in developing and progressing the Three Waters reforms.

b. In particular, there has been a complete failure to refer to Te Ture Whaimana in the WSL or EECP Bills (and also in the water services statutes already enacted), which is a breach of the express obligations between the Trust Board and other Waikato and Waipā River Iwi and the Crown.

c. In simple terms, the Waikato and Waipā River Settlements and associated Settlement Legislation, commencing with the Waikato-Tainui Waikato River Settlement and Waikato Raupatu Claims (Waikato River) Settlement Act 2010, substantively modified the application of the RMA and a large number of other natural resources statutes to the extent they applied to the Waikato and Waipā Rivers and activities within their catchments affecting the Waikato River and Waipā Rivers.

d. Under Waikato-Tainui's Kīngitanga Accord, which formed the foundation of the River Settlement arrangements, the Crown agreed (in clause 3.4) that:

i. in the development and drafting of any new legislation, the Crown will consider whether, by analogy with the nature and subject matter of the statutes in which Te Ture Whaimana has been given statutory recognition under the Waikato River Settlement, such new legislation should also include express legislative recognition of Te Ture Whaimana in the same or substantially similar form to that provided under the settlement; and

ii. where appropriate, any such new legislation when it is introduced into Parliament shall include express legislative recognition of Te Ture Whaimana in the same or substantially similar form to that provided under the Waikato River Settlement.

e. The Government's water services reforms encompass significant changes to the way in which stormwater, wastewater and drinking water will be governed, managed and delivered. As the Committee will be well aware, the Waikato River is a significant source

of such drinking water, but equally it is a receiving environment for the discharge of a number of wastewater and stormwater infrastructure facilities adjacent to the Waikato River or its tributaries. In the Trust Board's view, all the water services statutes (including the current Bills) fall squarely within the scope of the commitment in the Kiingitanga Accord and should reasonably include an express provision which recognises Te Ture Whaimana.

f. There are ongoing discussions and negotiations with the Crown regarding the full nature and extent of the provisions within the water services reforms that will be required to uphold the Crown's obligations under the Waikato River Settlement and the Kiingitanga Accord. Upholding the Crown's settlement obligations will necessitate further substantive amendment of the various water services statutes which will need to be effected through a future amendment (on agreed terms) of the Waikato and Waipā River Legislation.

g. Accordingly, while various amendments to the WCL and EECP Bills are proposed in this submission, those amendments only comprise some of the amendments that will be required in order for those Bills (and the existing water services statutes) to apply within the Waikato River catchment in a manner which recognises and upholds the Waikato River Settlement. It is beyond the reasonable scope of this submission to identify and set out all of the matters that will require further amendment and/or modification and respectfully it is not within the Select Committee's capacity to address all of those matters as they must first be agreed with the Crown.

h. However, in this context, it is important that not only the Select Committee, but also the legislature, appreciate and understand that the WSL and EECP Bills as currently proposed (and the existing water services statutes as currently enacted) cannot take effect within the Waikato and Waipā River catchments in a manner that upholds the Waikato and Waipā River Settlements without material modification.

5 However, with the above provisos expressly recorded, an interim amendment is sought through the WSL and EECP Bills (as detailed further below) to ensure that Te Ture Whaimana is recognised and given effect across all water services statutes (in partial reflection of the Crown's obligations under the Waikato and Waipā River Settlements).

WISH TO BE HEARD

6 The Trust Board wishes to be heard in support of this submission.

TŪWHARETOA WHAKAPAPA, TIKANGA AND WAI MĀORI

Ko Tongariro te Maunga	Tongariro is the Sacred Mountain
Ko Taupō te Moana	Taupō is the Lake
Ko Tūwharetoa te Iwi	Tūwharetoa is the Tribe
Ko te Heuheu te Tangata	Te Heuheu is the Man

7 Ngāti Tūwharetoa hold mana whenua, kaitiakitanga and rangatiratanga over the Central North Island including the Lake Taupō Catchment and part of the Upper Waikato, Whanganui, Rangitikei and Rangitaiki Catchments.

8 Ngāti Tūwharetoa are the descendants of Ngatoroirangi, Tia and other tūpuna who have occupied the Taupō Region continuously since the arrival of the Te Arawa waka. Ngāti Tūwharetoa are linked by whakapapa to our lands and our taonga. This connection establishes our mana whenua, kaitiakitanga and rangatiratanga, including our right to establish and

maintain a meaningful and sustainable relationship between whānau, hapū, marae and our taonga tuku iho.

9 As kaitiaki, Ngāti Tūwharetoa have an intrinsic duty to ensure the mauri and the physical and spiritual health of the environment (inclusive of our whenua and water resources) in our rohe is maintained, protected and enhanced.

10 Our relationship with Taupō Waters as tangata whenua is long-standing, deeply-rooted and unequivocal.

11 For Ngāti Tūwharetoa, water comes from the sacred pool of our ancestor, Io. Tāne entrusted the guardianship of all the waterways to Tangaroa while Tāwhirimātea was assigned the guardianship over the atmospheric forms of water and the weather. These two guardians hold the mauri, the essential life forces, of these forms of water.

12 For Ngāti Tūwharetoa, our rohe of the Central North Island forms part of our ancestor Papatūānuku. The universe and atmosphere above and around us is Ranginui. The geographical pinnacle of Papatūānuku, within our rohe, is our maunga (mountains) including our esteemed ancestor, Tongariro. To the north of Tongariro lies our inland seas, Taupō-nui-a-Tia and Rotoaira. Our mauri flows from our maunga through our ancestral awa (surface and underground streams and rivers) to our moana and to the hinterlands via the Waikato, Whanganui and Rangitaiki. They link us directly with our neighbouring iwi.

13 This tangible natural water flow is necessary to nurture every form of life it encounters during its journey. It is the intangible interconnecting web that is the lifeblood of our whakapapa and enables the survival of our wellbeing and identity as iwi, hapū, marae, landowners and whānau. This way of looking at our fresh water highlights a truth we would all acknowledge: water is our lifeblood. Water is necessary for life. Water is us and we are water.

TŪWHARETOA MĀORI TRUST BOARD

14 The Trust Board was established pursuant to the Māori Land Amendment Act 1924 and Māori Land Claims Adjustment Act 1926. The Trust Board later became a Māori Trust Board under the Māori Trust Boards Act 1955.

15 By deeds with the Crown dated 28 August 1992 and 10 September 2007 the Trust Board is the legal owner of the bed, water column and air space of Lake Taupō, the Waihora, Waihāhā, Whanganui, Whareroa, Kuratau, Poutu, Waimarino, Tauranga-Taupō, Tongariro, Waipehi, Waiotaka, Hinemaiaia and Waitahanui Rivers (**Taupō Waters**), and the Waikato River to Te Toka a Tia, inclusive of the Huka Falls.

16 The Trust Board's relationship to Taupō Waters is unique. The Trust Board holds legal title as trustee and acts as kaitiaki for Taupō Waters. These fiduciary responsibilities over Taupō Waters to present and future generations underpin all our activities and aspirations.

17 The Trust Board is also a party to the Upper Waikato River Deed with the Crown dated 31 May 2010 (**Upper Waikato River Deed**).[1] The Crown and the Trust Board agreed to enter into the Waikato River Deed in recognition of "the interests of Ngāti Tūwharetoa in the Waikato River and its catchment and in Taupō Waters and to provide for the participation of Ngāti Tūwharetoa in the co-governance and co-management arrangements in respect of the Waikato River".[2]

18 The Upper Waikato River Deed was given legal effect through the Ngāti Tūwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 (**Upper Waikato River Act**). The overarching

[1] The antecedents of which are the Waikato River Deed of Settlement 2008 and the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

[2] Upper Waikato River Deed 31 May 2010, clause 8.

purpose of the Upper Waikato River Act is to restore and protect the health and wellbeing of the Waikato River for present and future generations.[3]

19 Te Ture Whaimana o Te Awa o Waikato – the Vision and Strategy for the Waikato and Waipā Rivers (**Te Ture Whaimana**) is a product of the settlement agreements between the Crown and Waikato and Waipā River Iwi, including Ngāti Tūwharetoa. It is a statutory instrument,[4] and the primary direction setting document for the Waikato and Waipā Rivers and activities within their catchments affecting the Waikato and Waipā Rivers.[5]

20 The Trust Board has a joint management agreement (**JMA**) with:

a. the Waikato Regional Council relating to the co-governance and co-management of the Waikato River and activities within its catchment affecting the Waikato River, as well as Taupō Waters.

b. Taupō District Council regarding the administration of the RMA in relation to multiply-owned Māori land within the rohe of Ngāti Tūwharetoa.

21 Finally, since 2020 the Trust Board has assumed the Waikato Regional Council function of monitoring water quality around Lake Taupō, through an RMA section 33 transfer of powers.

TIRITI CONTEXT TO WATER SERVICES DELIVERY REFORM

22 It must be acknowledged that the provisions in this Bill are presented against the backdrop of the Waitangi Tribunal's Wai 2358 Stage 2 Report on the National Freshwater and Geothermal Resources Claims (Stage 2 Wai 2358 Report), which made several findings and recommendations following a hearing process lasting several years. The Tribunal found:

a. The Crown's guarantees to Māori in the Treaty, including the guarantee of tino rangatiratanga, require the use of partnership mechanisms for the joint governance and management of freshwater taonga.

b. The Crown's Next Steps reform programme failed to meet its stated objective of enhancing Māori participation in freshwater management and decision-making, due largely to Crown omission of options to address Māori rights and interests.

c. Iwi without co-governance and co-management arrangements in their Treaty settlements are unable to act effectively as Treaty partners in freshwater management. The governance and co-management mechanisms available to iwi under the RMA have been made virtually inaccessible.

23 The critique in this report, and the expectations it sets for a future system that is Tiriti compliant, must inform the lens with which the Bills are reviewed.

AMENDMENTS SOUGHT

24 The WSL and EECP Bills are subsequent Bills in a suite of legislation intended to reform delivery of water services in Aotearoa.

25 The purpose of prior legislation is as follows:

[3] Upper Waikato River Act, section 3.

[4] Given legislative effect through the Waikato and Waipā River Settlement Legislation: see also Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and Ngā Wai o Maniapoto (Waipā River) Act 2012.

[5] The obligation to give effect to Te Ture Whaimana is the strongest direction that Parliament has given in relation to any RMA planning document.

a. The Taumata Arowai Act 2020 established Taumata Arowai (the Water Services Regulator) and provided for its objectives, functions, and governance arrangements.

b. The Water Services Act 2021 (**2021 Act**) established a drinking water regulatory framework to ensure drinking water suppliers provide safe drinking water to consumers.

c. The Water Services Entities Act 2022 (**2022 Entities Act**), established four publicly-owned water service entities to provide water services in place of local authorities, and set out their representation, governance and accountability arrangements. It also provided for transitional arrangements to enable preparation for establishment of water services entities to commence.

26 Both Bills build on the existing Acts to deliver the reforms. Despite the sequencing of the legislation, given the complex and detailed nature of the reform required, the workability of a new and transformational water services system for Aotearoa turns on the cohesion of the complete package of reforms.

27 In particular, the WSL Bill is an omnibus bill that broadly amends the 2022 Entities Act across many of its provisions and topics, and amends and repeals 28 other statutes including the 2021 Act. In that context, fundamental foundational propositions of water services reform which the WSL Bill now further embeds must properly be within scope for comment.

SUBMISSIONS ON THE WSL BILL

Te Mana o Te Wai

Definition

28 The definition of Te Mana o te Wai in the 2022 Entities Act is unworkable in its current form. Section 6 of the 2022 Entities Act states that Te Mana o Te Wai "applies, for the purposes of this Act, to water (as that term is defined in section 2(1) of the Resource Management Act 1991)." The cross-reference has inadvertently adopted RMA section 2(c) of the definition of water, which "does not include water in any form while in any pipe, tank, or cistern". This is clearly an unintended error as it makes a nonsense of Te Mana o te Wai for the purposes of this Act.

29 The Trust Board understands that the adoption of the section 2 RMA definition of water was directed toward the matters in section 2(a) and (b), consistent with submissions made, including by iwi and hapū, that the definition of Te Mana o Te Wai be extended to include not only freshwater, but also marine and estuarine waters, lagoons and puna. This was to recognise the fact that three waters infrastructure is not constrained to freshwater bodies, but impacts on our all our waterways and receiving environments.

30 Under section 2(a) and (b) of the RMA water:

> (a) means water in all its physical forms whether flowing or not and whether over or under the ground:
>
> (b) includes fresh water, coastal water, and geothermal water.

31 **Relief sought:** Amend the section 6 definition of Te Mana o te Wai as follows

> **Te Mana o te Wai**—
>
> (a) has the meaning set out in the National Policy Statement for Freshwater Management issued in 2020 under section 52 of the Resource Management Act 1991 and any statement issued under that section that amends or replaces the 2020 statement (and *see also* sections 4, 5, and 14 of this Act); and

(b) applies, for the purposes of this Act, to:

(i) water in all its physical forms whether flowing or not and whether over or under the ground; and

(ii) fresh water, coastal water, and geothermal water.

Application

32 Further, while a range of provisions in the 2022 Entities Act refer to Te Mana o te Wai, including that all persons performing or exercising duties, functions, or powers under the 2022 Entities Act must give effect to Te Mana o te Wai, the Trust Board considers that the WSL Bill can strengthen the water service entity framework by ensuring that Te Mana o te Wai is appropriately reflected throughout the framework and to provide more clarity on its application and effect:[6]

a. The WSL Bill must include Te Mana o te Wai as an overarching purpose, or foundational and interpretive concept, guiding decision making, planning, governance, accountability, and service delivery.

b. Te Mana o te Wai is reflected at all levels of the water service entity framework, including as a core competency of the boards and embedded throughout all operational documents.

33 **Relief sought:** Reaching this point requires:

a. Overarching objective – An amendment is required consistent with examples in Treaty settlement legislation, including the Waikato River and Waipā River legislation, where Te Mana o te Wai is included as the overarching purpose of the Act alongside the existing purpose clause. Alternatively, Te Mana o te Wai could be elevated to a foundational and interpretive concept.

b. Board competency – An amendment to section 76 of the 2022 Entities Act (regarding the collective duties of a water services entity board relating to Te Tiriti o Waitangi) is required to also include reference to Te Mana o Te Wai (mirroring the dual recognition in section 4).

c. Operational documents – Amendment to all provisions concerning the content of the water services entities' operational documents to ensure appropriate reference to Te Mana o te Wai. While some operational documents already include reference to Te Mana o te Wai, in others the reference is insufficient.7 For example, section 149(2)(d) of the 2022 Entities Act requires a statement of intent for a water services entity to set out any actions the entity intends to take relating to water services as part of its response to a Te

[6] This was also a specific recommendation of the Governance Working Group on Representation, Govrenance and Accountability of New Water Services Entities, page 51.

[7] For example:

- section 133(2)(d) of the 2022 Entities Act, the Government Policy Statement must include the Government's expectations in relation to Māori interests, partnering with mana whenua, and giving effect to Te Mana o te Wai
- section 139(2)(a)(v) of 2022 Entities Act a statement of strategic and performance expectations for a Water Services Entity must include how the water services entity is expected to give effect to Te Mana o te Wai.
- proposed section 256(1)(f) under the WSL Bill, a stormwater management plan must state how the stormwater management plan is to give effect to Te Mana o te Wai, including any actions the water services entity is to take as part of a response to a Te Mana o te Wai statement under section 144.

Mana o te Wai statement for water services. It does not require a water services entity to set out any actions the entity intends to take to give effect to Te Mana o te Wai separate to receipt of any Te Mana o te Wai statement. This means that the obligation is only triggered by a Te Mana o te Wai statement. That is not acceptable. Section 149(2)(d) requires amendment as follows:

> (d) any actions the entity intends to take relating to water services <u>to give effect to Te Mana o te Wai, including (consistent with its plan under section 144(2)) as part of its response to a Te Mana o te Wai statement for water services.</u>

Undermining of Ngāti Tūwharetoa rights and interests in water

34 The Trust Board has a long and detailed history of asserting rights to, and protecting, the wai and whenua within in our rohe, including Taupō Waters.

35 The Trust Board holds legal title as trustee and acts as kaitiaki for Taupō Waters. These fiduciary responsibilities over Taupō Waters to present and future generations underpin all our activities and aspirations.

36 The Government has failed to deal with the issue of iwi and hapū rights and interests in water in developing successive Bills to reform delivery of water services in Aotearoa. While section 10 of the 2022 Entities Act ostensibly preserves right and interests in water, the proposals in this Bill prejudice those rights and interests in so far as they manifest in the ownership of water assets, liabilities and other matters.

37 In particular, new Part 2 of Schedule 1 of the WSL Bill provides for the transfer of local government organisation assets, liabilities and other matters to water services entities, voiding application of provisions of the Public Works Act 1981 that relate to disposal to former owners of land (including Māori land) not required for a public work.

38 Further, there is no role for iwi and hapū, including Ngāti Tūwharetoa as owners of Taupō Waters, in respect of preparation of the allocation schedule for each water service entity, the primary mechanism used to transfer assets from local authorities to water service entities. The proposed WSL Bill amendments applying to the allocation schedules include new consultation requirements (though with local government organisations only, not iwi and hapū), and the requirement for Ministerial approval.

39 Land that is surplus to requirements within the rohe of Ngāti Tūwharetoa must be properly available for transfer to Ngāti Tūwharetoa iwi and hapū. This is also consistent with right of first refusal arrangements in various Treaty Settlement statutes, including the Ngāti Tūwharetoa Claims Settlement Act 2018.[8]

40 **Relief sought:** New provisions are required in the WSL Bill that provide for iwi and hapū to be involved at the earliest stage in the assessment of which assets, including land, may or may not be considered a water infrastructure asset and whether they should be transferred to a water services entity. The provisions need to apply to ongoing water entity decisions in respect the retention or disposal of assets.

41 In similar vein, local government-owned mixed-use rural water supplies that provide drinking water in addition to water for farming-related purposes will transfer to water services entities. The Bill also contains provisions (proposed sections 234 – 244) that enable those supplies to be subsequently transferred to an alternative operator (for example, the farming or community

[8] RFR provisions in Treaty settlement legislation contemplate the transfer by the Crown of existing public works to local authorities, in which case local authorities become "RFR landowners" and subject to the obligations of an RFR landowners. See for example, section 150 of the Ngāti Tūwharetoa Claims Settlement Act 2018.

served by the supply). The alternative operator must prepare a business plan for the proposal that is independently assessed for its viability. Transfer may occur if supported by a referendum. The transfer of the service cannot occur if it breaches any Treaty settlement obligation.

42 The Trust Board is not opposed to water supplies being managed locally, including potentially by mana whenua. However, a similar process needs to be built in, involving iwi and hapū at the earliest stage, where the assets to be transferred are first assessed for continued need and opportunities for transfer of surplus assets are identified. As above, the provisions need to apply to ongoing water entity decisions in respect the retention or disposal of assets. Further, a clause such as that proposed in respect of water service entity subsidiaries is required, where alternative operators must give effect to Treaty settlement obligations.

43 Practically, we also note that there appears to be no clarity about what happens if the alternative operator no longer wishes to supply water services. The most relevant provision appears to be proposed section 250 but that provision is drafted with problems with drinking water supply in mind rather than a decision to discontinue a well-functioning supply system. We would assume that responsibility for supply including any assets reverts back to the relevant water services entity, but we suggest that is clarified in the WSL Bill provisions, and where that transfer occurs iwi and hapū participation is similarly engaged.

Upholding Ngāti Tūwharetoa Tiriti o Waitangi settlements

44 The Trust Board supports the transitional provisions in the WSL Bill affirming that, during the establishment period for water services entities, all persons exercising duties, functions, or powers must uphold the integrity, intent and effect of Tiriti settlements.[9] We also support the direction that subsidiaries of water services entities must give effect to relevant Treaty settlement obligations that apply to its parent entity.[10] These proposals reinforce the general proposition in section 9 of the 2022 Entities Act that Tiriti settlement obligations prevail.

45 Proposed section 225 also states that whenever a water services entity is looking to purchase land for water services infrastructure, it must consult the Minister for Treaty of Waitangi Negotiations for the purpose of considering the Crown's obligation to provide redress for future Treaty of Waitangi claims. We support the intent of this provision to ensure that the pool of land available for Treaty Settlements is not reduced by the operation of this legislation.

46 The Explanatory Note to the WSL Bill explains that engagement is underway with iwi who have water service-related Tiriti settlement arrangements. It contemplates changes to Tiriti settlement legislation to ensure that settlement obligations are carried forward from territorial authorities to the new water services entities. However, the Bill does not address the potential need to modify Water Services legislation to accommodate settlement arrangements.

<u>Recognition of Te Ture Whaimana</u>

47 The Waikato and Waipā River Settlements are a fundamental element of all matters relating to the Waikato and Waipā Rivers and activities in their catchments affecting the Waikato River and Waipā Rivers. This must be expressly recognised in development and implementation of all water services legislation.

48 This is a matter of ongoing engagement with the Crown, and further amendment of all the water services statutes will be required in order to uphold the Waikato and Waipā River Settlements. In the interim (pending such wider amendments), a preliminary but important amendment is sought now, through the WSL and EECP Bills, in order to ensure that Te Ture Whaimana is recognised and upheld immediately across all relevant water services decision-making.

[9] The section currently exists in Schedule 1, clause 37 of the 2022 Entities Act.
[10] Amendment to 2022 Entities Act, Schedule 5 clause 8 of the WSL Bill.

49 As stated, the recognition of Te Ture Whaimana as the primary direction-setting document for the Waikato and Waipā Rivers and activities within their catchments affecting the Waikato and Waipā Rivers is at the heart of the Waikato and Waipā River Settlements. This is expressly recorded in sections 5 of the Upper Waikato River Act and the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.[11]

50 The Upper Waikato River Act and the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 further provide for decision-makers under 20 statutes which affect or relate to natural resources, including the RMA and Local Government Act 2002, to give effect or have particular regard to Te Ture Whaimana when carrying out functions or exercising powers relating to the Waikato River or activities in the catchment that affect the Waikato River.

51 In view of the clear relevance to, and inter-relationship of, the Three Waters system (and associated water services infrastructure, planning, development and decision-making) with the Waikato River and its catchment, it is both appropriate and necessary for persons exercising functions and powers under the following water services statutes to also have particular regard to Te Ture Whaimana as a minimum requirement:

a. Taumata Arowai Act;

b. 2021 Services Act;

c. 2022 Entities Act; and

d. EECP Act (once enacted).

52 The Trust Board therefore requests that:

a. First, an additional section be included in the WSL Bill which amends section 18 of the Upper Waikato River Act by adding the following new subsections (8) to (10) to that section:

> (8) Subsection (9) applies to a person carrying out functions or exercising powers under an enactment specified in subsection (10) if the functions or powers relate to—
>
> (a) the Waikato River; or
>
> (b) activities in the catchment that affect the Waikato River.
>
> (9) Except as otherwise expressly provided in this Act, the person must have particular regard to the Vision and Strategy in addition to any requirement specified in the enactment for the carrying out of the functions or the exercise of the powers.
>
> (10) The enactments are the—
>
> (a) Taumata Arowai Act 2020;
>
> (b) the Water Services Act 2021;
>
> (c) the Water Services Entities Act 2022.

[11] And section 4 of the Ngā Wai o Maniapoto (Waipā River) Act 2012.

b. Secondly, an additional section be included in the EECP Bill which amends section 18 of the Upper Waikato River Act by adding the following new paragraph (d) to section 18(10) of that Act (as added by the amendment requested through the WSL Bill set out above):

> (10) The enactments are the—
>
> …
>
> (d) the Water Services Economic Efficiency and Consumer Protection Act 2023.

53 We confirm that the amendments to section 18 of the Upper Waikato River Act set out above do not address all matters relevant to Te Ture Whaimana in terms of the waters services statutes and that further provisions are the subject of ongoing discussion. However, the above amendments provide the minimum necessary recognition for Te Ture Whaimana that must be included now in respect of those four water services statutes.

54 **Relief sought:**

a. We request that the WSL Bill set out a process, as with the Natural and Built Environment Bill, for modification of Water Services legislation to accommodate settlement arrangements.

b. In respect of Te Ture Whaimana, an amendment as per the above.

Upholding other arrangements

55 It is equally critical that negotiated arrangements such as JMAs entered into under the RMA that do not arise from Treaty settlements[12], Mana Whakahono ā Rohe,[13] section 33 RMA transfers[14] and other non-RMA arrangements relating to water services delivery or infrastructure are upheld.

56 **Relief sought:** We support retention of clause 78 of Schedule 1 and proposed section 474(1)(c) establishing that contracts, arrangements or understandings that local authorities have entered with mana whenua relating to water services, transfer to water services entities.

Partnering and engaging with mana whenua

57 Section 5 of the 2022 Entities Act refers to a list of provisions in that Act that are intended to recognise and respect the Crown's responsibility to give effect to the principles of te Tiriti o Waitangi,[15] and the WSL Bill proposes a range of additions to the list:

a. Proposed section 5(ba) introduces a new function of a water services entity is to "partner and engage" with mana whenua in its service area.[16] This is a general function, with not specific examples given. We consider this new section appropriate, as it mirrors section

[12] There are currently JMAs under the RMA between Ngāti Tūwharetoa and Taupō District Council (2009) regarding consenting on Māori land and between Ngāti Porou and Gisborne District Council (2015) regarding decision-making in the Waiapu catchment. Māngai Māori arrangements on critical decision-making committees between Waikato-Tainui and both Hamilton City Council and Waikato District Council.

[13] Being an iwi participation arrangement entered into under Part 5 Subpart 2 of the RMA (noting the recent mana whakahono ā rohe signing between Ngāti Tūrangitukua and Taupō District Council)

[14] There is currently one transfer that has been made under section 33 of the RMA (being between Ngāti Tūwharetoa and Waikato Regional Council).

[15] Critically, this list does not limit 2022 Entities Act section 4(1)(a) (all persons performing or exercising duties, functions, or powers under this Act must give effect to the principles of te Tiriti o Waitangi / the Treaty of Waitangi), as per 2022 Entities section 4(2); and Treaty settlement obligations prevail, as per 2022 Entities Act section 4(3).

[16] WSL Bill clause 4(1) (inserting 2022 Entities Act, section 5(ba)).

14(g) of the 2022 Entities Act stating that an operating principle of a water services entity is "partnering and engaging early and meaningfully with Māori".

b. Proposed section 5(h) then cross-references a range of provisions that relate to duties, functions or powers of water service entities and the Minister, for which "there must be engagement with mana whenua". No reference to partnership is made. Those provisions concern:

The board of a water services entity must engage with mana whenua when:

i. developing a controlled drinking water catchment plan;[17]

ii. assessing access to drinking water supply and other water services;[18]

iii. developing a stormwater management plan or stormwater network rules;[19]

iv. developing or amending its trade waste plan;[20]

v. making rules that would limit certain work being undertaken near a water supply system or other water network;[21]

vi. adopting a policy for charging for contributions to water infrastructure;[22]

vii. developing or amending its compliance and enforcement plan;[23] and

viii. developing or amending rules for reporting and record keeping to assist with monitoring compliance.[24]

The Minister must engage with mana whenua:

ix. about the making of a model constitution for water services entities before making it;[25]

x. about the transfer of any agreements, contracts, or understandings they may have with local authorities to the water services entity.[26]

58 Nowhere else in the 2022 Entities Act are matters on which the water services entities must partner with mana whenua listed. This makes existing section 14 (regarding operating principles) and proposed section 5(b)(a) both misleading and an empty promise.

59 Engagement is defined under the WSL Bill.[27] A water services entity or the Minister must, before deciding on a matter, consult on a proposal and/or seek input, on an iterative basis, during the

[17] WSE Act, section 232(5); inserted by WSL Bill.
[18] WSE Act, section 247(1)(a); inserted by WSL Bill.
[19] WSE Act, section 257(1)(b) and 262 (1)(d); inserted by WSL Bill.
[20] WSE Act, section 271(1)(c); inserted by WSL Bill.
[21] WSE Act, section 286(1)(b); inserted by WSL Bill.
[22] WSE Act, section 347(1)(a); inserted by WSL Bill.
[23] WSE Act, section 355(b); inserted by WSL Bill.
[24] WSE Act, section 473(3); inserted by WSL Bill.
[25] WSE Act, section 474(2) ; inserted by WSL Bill.
[26] WSE Act, section 474(6) ; inserted by WSL Bill.
[27] At proposed section 461 of the WSL Bill, which is substantially the same as the engagement provision (section 206) in the 2022 Entities Act.

formulation of a proposal, or feedback on a proposal.28 To "partner and engage" clearly requires a higher standard.

60 **Relief sought:**

a. Proposed section 5(h) requires amendment to provide that there must be "partnership and engagement with mana whenua", to ensure consistency with proposed section 5(ba).

b. Consequential amendments will be necessary to the individual provisions to which proposed section 5(h) relates, to confirm the partnership relationship.

c. Finally, reference to two further provisions should be added to proposed section 5(h), to ensure a role for mana whenua is accommodated in respect of those matters:

i. Proposed section 277 (Engagement requirements for water usage restrictions and consumer behaviour rules).

ii. Proposed section 295 (Engagement for water services infrastructure connection requirements).

Definition of mana whenua

61 Clause 5(4) of the WSL Bill directs the insertion of a definition of mana whenua at 2022 Entities Act section 6.

62 **Relief sought:** The definition is the same as the current definition of mana whenua in 2022 Entities Act section 6, which was the wording preferred by iwi and hapū in submissions on the 2022 Entities Act. In the event other submitters take the opportunity to request an alternative meaning, we seek retention of the definition.

Purpose and content of Government policy statement

63 Under the 2022 Entities Act the Minister may issue a Government policy statement on water services. Section 133 of the 2022 Entities Act sets out the purpose of Government policy statements and lists matters that must be included when one is created, as well as matters that are optional to include.

64 Clause 13 of the WSL Bill adds redressing historic unfairness in accessing water services as an optional matter that the Government can set expectations for water services entities on in a policy statement.

65 **Relief sought:** We support the retention of this new provision. Addressing historic unfairness in accessing water services will benefit rural Māori communities.

Te Mana o te Wai statement for water services

66 This submission relates to two issues:

a. Funding to produce Te Mana o te Wai statements; and

b. A water service entity's response to a Te Mana o te Wai statement.

<u>Funding</u>

67 The Governance Working Group on Representation, Governance and Accountability of New Water Services Entities identified that one of the key governance inputs and accountabilities for water services entities under regime that are heavily dependent on iwi/hapū as mana whenua are the preparation of Te Mana o te Wai statements.

[28] WSL Bill clause 22 (inserting 2022 Entities Act, section 461(2)).

68 The Working Group considered, and the Trust Board agrees, that:

a. The effectiveness and integrity of the Three Waters regime requires iwi and hapū to be appropriately and equitably resourced to carry out these important functions.

b. Consistent with the obligations and relationship under Te Tiriti, these matters should be the subject of dedicated Crown funding in addition to any contribution from the water services entities.

69 **Relief sought:** Amend section 143 of the 2022 Entities Act to add new subclause 5 as follows:

> (5) The department and the relevant water services entity must jointly fund and provide resources sufficient to enable mana whenua to:
>
> (a) prepare a Te Mana o te Wai statement for water services; and
>
> (b) engage with the relevant water services entity in accordance with section 144(1)(b).

Water service entity response

70 Section 144 of the 2022 Entities Act sets out the actions required from a water services entity if provided with a Te Mana o te Wai statement by mana whenua. Those actions include acknowledging that the statement was received, engaging with mana whenua in relation to the preparation of a formal response, and preparation of a plan that sets out how the water services entity intends to give effect to Te Mana o te Wai.

71 Clause 16 of the WSL Bill requires that a water service entity's response to a Te Mana o te Wai statement must include a statement on how the plan gives effect to the obligations specified in section 4 (relating to Te Tiriti o Waitangi and Te Mana o Te Wai).

72 **Relief sought:** We support retention of this provision, with amendment. The provision as drafted does not require the plan included in an entity's formal response to be informed by the Te Mana o te Wai statement when setting out how the water services entity intends to give effect to Te Mana o te Wai. We request a revised section as follows:

> **16 Section 144 amended (Water services entity must respond to Te Mana o te Wai statement for water services)**
>
> …
>
> (2) A response to a Te Mana o te Wai statement for water services must include—
>
> (a) a plan that sets out how the water services entity intends (consistent with, and without limiting, section 4(1)(b)) to give effect to Te Mana o te Wai–
>
> (i) informed by the Te Mana o te Wai statement for water services; and
>
> (ii) to the extent that it applies to the entity's duties, functions, and powers; and
>
> (b) a statement on how the plan gives effect to the obligations specified in section 4.

Works on Māori land

73 Subpart 1 of new Part 6 sets out a water service entity's power to carry out work in relation to water services infrastructure on or under land, and includes specific requirements for carrying out work on or under limited categories of Māori land.[29]

74 Notice is required in all instances, although the need to seek landowner consent to undertake works is not a blanket requirement. This is a concern to the Trust Board. In respect of these specific issues we offer comments, and propose amendments, below.

75 As an overarching comment in respect of all sections relating to water service entity works on Māori land, the Trust Board considers that the approach of clause 298 of the Natural and Built Environment Bill (**NBE Bill**) is required. That clause, which concerns designations, confirms that:

a. the functions, duties, and powers conferred in respect of designations must be exercised in a manner that recognises that 'protected Māori land' (as defined in the NBE Bill) is a taonga tuku iho for the owners of the land and the hapū associated with the land;

b. a person exercising a power or performing a function or duty under the subpart must consider the rights and interests of owners of protected Māori land to retain, control, utilise, and occupy the land for the benefit of present and future generations of owners, their whānau, and their hapū.

76 **Relief sought:** We request that the same approach is taken to works on Māori land by water service entities, through a new section 206A that adopts the same language in respect of Māori land under the 2022 Entities Act.

<u>New section 207 (Māori reservation land or land on which marae or urupā located)</u>

77 Proposed section 207 applies to any work to be carried out by a water services entity. The entity may enter the land and carry out work only if:

a. consent is obtained from the owners; and

b. 15 working days' notice of any intention to enter the land and carry out work is given to an occupier of the land.

78 **Relief sought:** The Trust Board requests retention of this clause, subject to an amendment to proposed section 207(2)(b) confirming that notice must be given to the owner as well an occupier of the land. This amendment is necessary because there may be no permanent occupiers of the land, but the owners nonetheless have an interest in knowing when works are to be completed.

<u>New sections 208, 209 and 210 (Māori land with more than 10 owners)</u>

79 Proposed section 208 outlines the consent and notice requirements applying to the following water service entity activities on Māori land:

a. The construction or placing of water services infrastructure on or under land or under a building on land, where proposed on Māori land with more than 10 owners.

b. Removing any obstruction or blockage, or clearing any flora that constitutes a risk to, water services infrastructure on or under land or under a building on land and operating, inspecting, maintaining, altering, renewing, or replacing any water services infrastructure on or under land or under a building on land (referred to in this submission as **Maintenance Activities**), where proposed on Māori land with more than 10 owners and the whenua is Māori reservation land or land on which marae or urupā are located.

[29] WSL Bill clause 22.

80 The water services entity may enter the land and carry out the work only if:

a. it has been granted consent of the owners;[30] and

b. 30 working days' notice of any intention to enter the land and carry out work is given by:

i. serving the trustees of the principal marae of the hapū associated with the land; or

ii. publishing a notice via the Māori Land Court; or

iii. serving a notice on the Registrar of the Māori Land Court.

81 Proposed section 209 applies to a water services entity undertaking Maintenance Activities on multiply-owned Māori land where the whenua is not Māori reservation land or land on which marae or urupā are located. The notice requirements associated with proposed section 209 are the same as section 208 above. However, there is no requirement to obtain consent from the Māori land owner.

82 Proposed section 210 applies if a water services entity wishes to carry out work on land that is in a reserve vested in a PSGE under a Treaty settlement Act and managed by a local authority. Notice in writing must be given to the PSGE and the local authority at least 15 working days before work begins. Again, there is no requirement to obtain consent from the Māori land owner.

83 **Relief sought:** The Trust Board has the following issues with proposed sections 208 – 210:

a. In relation to works carried out under sections 208 and 209:

i. Notice must be given to landowners.

ii. Indeed, landowner notification should be substituted for "serving the trustees of the principal marae of the hapū associated with the land". This is not an effective option to ensure that persons who have a relationship with that whenua are given notice of works:

- It is unclear from the WSL Bill or its supporting material how the relevant water services entity will determine who the relevant hapū is or which is their principal marae. Determining the relevant hapū group for land can be difficult for some entities and, where the wrong group is contacted, the notification requirement becomes wholly ineffective.

- Even where the relevant hapū group is known, in the case of section 209 where there is no proposed requirement to obtain landowner consent, allowing a water services entity to satisfy its notification requirements by notifying that the trustees of the relevant hapū group places the burden of actually notifying the Māori landowners on that group. That is unacceptable.

iii. To ensure that landowners of multiply-owned Māori land do not bear the burden of having to communicate that works are proposed to other persons with an

[30] Where there are more than 10 owners, consent is determined in accordance with the rules under Parts 9 and 10 of Te Ture Whenua Māori Act 1993, which provide how land owners may collectively make decisions.

interest in the whenua, the notification requirement should be amended as follows:

> (a) given written notice of its intention to enter the land and carry out work to the owners of the land; and
>
> (b) published a notice on an Internet site maintained by or behalf of the Maori Land Court or in the Maori Land Court Pānui (or both) relating to its intention to enter the land and carry out the work; or
>
> (c) served notice on the Registrar of the Maori Land Court in accordance with section 181 of Te Ture Whenua Maori Act 1993 of its intention to enter the land and carry out the work.

b. We do not support the lack of obligation to obtain landowner consent in proposed sections 209 and 210. This seemingly arises because the Maintenance Activities the subject of these sections are considered less likely to adversely affect the whenua concerned, and the whenua to which these sections apply are considered less special. If that is the case, we strongly refute such suggestions. As identified in Te Ture Whenua Māori Act 1993, and recently acknowledged in the NBA Bill, all Māori land is a taonga tuku iho.

c. The reference to "Māori land with more than 10 owners" limits the land to which the relevant landowner consent and notification requirements apply. This is because it:

   i. excludes application of the requirements where Māori land has less than 10 beneficial owners;

   ii. makes uncertain whether the provisions apply to multiply-owned Māori land where administration structures, such as a trust or incorporation,[31] are in place.

   This cannot be right.

d. Finally, The Trust Board does not support the very limited application of section 210 to land vested in a PSGE under a Treaty settlement Act and managed by an administering body that is a local authority. That suggests that other Treaty settlement lands are not lands for which protection should be afforded as taonga tuku iho.

e. We request that:

   i. section 210 is deleted.

   ii. the reference to "Māori land with more than 10 owners" in sections 208 and 209 is amended to "other Māori land", which is defined as:

> (a) Māori customary land;
>
> (b) Māori freehold land;
>
> (c) land held by or on behalf of an iwi or a hapū if the land was transferred from the Crown, a Crown body, or a local authority.

[31] Proposed s322(7) states that "trustee includes a body corporate constituted under Part 13 of Te Ture Whenua Māori Act 1993", so covers incorporations.

(d) land received through Treaty of Waitangi settlement.

iii. Landowner consent is a condition of all proposed water services entity works on Māori land. This should be the default position in any event, given proposed new section 229 allows a water services entity to appeal to the Māori Land Court against a refusal to grant consent.

iv. Proposed sections 208(3) and 209(2)(c), which refer to processes specific to "Māori land with more than 10 owners", are qualified as applying where the "other Māori land" is not vested in a trust or incorporation.

Requirements for easements over certain land

84 Proposed section 224 states that if a water services entity needs to create an easement over land that is a Māori reservation or is marae or urupā land, it must follow the Māori Land Court process for creation of easements in Te Ture Whenua Māori Act 1993.

85 The Trust Board supports maintaining the jurisdiction of the Māori Land Court in relation to the creation of easements on Māori land, rather than a bespoke legislative solution subverting existing process.

Appeals to the Māori Land and Māori Appellate Courts

86 Proposed section 229 allows a water services entity to appeal to the Māori Land Court where the Māori landowners refuse to grant access for works. The Māori Land Court has the power to either confirm the decision to refuse access or to set it aside. Proposed section 230 confirms that a decision of the Māori Land Court about access may be appealed to the Māori Appellate Court in the usual way.

87 The process is in contrast with the approach to general land under the WSL Bill, where a water services entity can apply to the District Court for an order authorising it to carry out any work where access is refused to general land.

88 The Trust Board supports proposed section 229. It adopts the starting point that the decision to refuse access sits with the landowners, and not with the Court. The Court may then consider whether that decision was properly made and reasoned, rather than usurp the mana of Māori landowners to decide in the first instance.

89 We consider that the Māori Land Court is best placed to understand the concerns Māori landowners may have about granting access to their whenua, including recognising the impact on Māori land is a taonga tuku iho.

Board may designate controlled drinking water catchment areas

90 Proposed section 231 authorises a water services entity board to designate controlled drinking water catchment areas for which a controlled drinking water catchment management plan may be issued for the purposes of (among other things) managing and controlling a source of a drinking water supply in the area.

91 Under section 231(2), a designation may be made only if:[32]

a. the water services entity owns or has long-term control of the land to which the designation relates; or

b. the owner of the land to which the designation relates agrees to the designation.

[32] This is re-enforced by new section 232(3).

92 **Relief sought:** This is an important qualification that must be retained, to ensure that iwi and hapū puna, including those of Ngāti Tūwharetoa, are not captured where they do not agree.

Access to drinking water supply, wastewater, and urban stormwater services to be assessed

93 Proposed section 245 requires the boards of water services entities to assess access to drinking water and wastewater and urban stormwater services for the communities in its service area.

94 Among other things, an assessment must take account of the equity of provision of drinking water, wastewater services, and urban stormwater services, including for Māori.[33]

95 The board of a water services entity must:[34]

a. must invite the territorial authorities, regional councils, and mana whenua in the service area of the water services entity, and the water services entity's consumer forum, to participate in the assessment; and

b. must take the assessment into account in its asset management plans, funding and pricing plans, and stormwater management plans.

96 All or part of the work of undertaking an assessment may be carried out on behalf of a water services entity by another appropriate organisation, including an iwi or Māori organisation.[35]

97 The Trust Board supports the retention of these provisions within the provisions concerned with assessment of water services. Obtaining better data on access to water services is essential to addressing inequality of access, particularly for rural Māori communities. We consider that Māori organisations are best placed to engage with Māori communities about their needs and therefore support the ability for assessments, or part thereof, to be carried out by iwi or Māori organisations.

Duty to ensure communities have access to drinking water if existing supplier faces significant problems

98 Proposed section 250 states that, if a supplier (not being the water services entity) is facing a significant problem or potential problem with its drinking water supply, and a water services entity takes over the management and operations of a drinking water supplier on a permanent basis, the water services entity, Taumata Arowai, the former supplier, and (if relevant) the affected consumers must work together to determine how to deal with, among other things, any assets and liabilities of the former supplier.36

99 This proposed section makes no reference to mana whenua, and yet it is a prime opportunity to demonstrate the partnership commitment to mana whenua in proposed section 5.

100 **Relief sought:** Amend sections 250(2)(a) and (6) as follows:

(a) work collaboratively with the supplier, the consumers of the supply, <u>mana whenua</u> and Taumata Arowai to identify, as the circumstances allow and within a time frame determined by Taumata Arowai, 1 or more of the following:

<u>…</u>

(6) If a water services entity takes over the management and operations of a drinking water supplier on a permanent basis, the water services entity, Taumata Arowai, the

[33] WSL Bill clause 22, new WSE Act section 245(2)(g)(ii).
[34] WSL Bill clause 22, new WSE Act section 247(1).
[35] WSL Bill clause 22, new WSE Act section 247(2)(d).
[36] WSL Bill clause 22, new WSE Act section 250(6).

former supplier, mana whenua and (if relevant) the affected consumers must work together to determine how to deal with

Vesting water services infrastructure in water services entity

101 Proposed section 317 provides for a person (the owner of water services infrastructure) to apply to a water services entity to vest water services infrastructure in the entity.

102 The Trust Board takes this provision to be directed toward the vesting of private owner infrastructure in the water services entity, and request that this is made clear in the section to ensure that this provision does not contravene iwi and hapū rights and interests (i.e by being an alternative pathway for local government asset transfers).

103 **Relief sought:** Amend section 317(4) as follows:

(4) In this section, person means the private owner of water services infrastructure.

Liability for water services charges in respect of Māori land

104 Proposed section 322 of the 2022 Entities Act sets out how charges are to be applied to Māori land in the service area of water services entity:

a. Where the land has only one or two owners, the owners will be required to pay for the water services.

b. If the Māori land is owned by multiple people and is also leased, the lessee will be required to pay for the water services, unless the lease states that the owners will be liable to pay the water services charges.

c. If Māori land in multiple ownership is subject to an occupation order, the holder of the occupation order must pay for the water services, unless the occupation order states that the owners will pay the water services charges.

d. If Māori land is owned by more than 2 people, the owners collectively are responsible for the water services charges.

e. If the Māori land is in a trust, the trustees are responsible for paying the water services charges.

105 **Relief sought:** This provision requires amendment to ensure adverse consequences do not befall Māori land owners:

a. It is not necessary for persons occupying Māori land to hold an occupation order. Occupation arrangements may be formalised in a range of ways – by an occupation order, a license to occupy or a lease – but they may also remain informal where there is agreement between the owners. However, such a situation either falls outside of new section 322, or arguably renders owners liable. An amendment is required to remove reference to an occupation order and instead focus on the "occupier of the land"[37]. This captures informal arrangements, occupation orders and licenses to occupy, and importantly, sets a default position that does not place liability on owners or trustees.

b. Proposed section 322(6) is unclear and requires clarity. Until we are certain as to its meaning we can offer no suggested amendment.

c. We suggest the following amendments to proposed section 322:

322 Liability for water services charges in respect of Māori land

[37] The language used in new section 207(2)(b).

…

(4) If Māori land in multiple ownership is occupied through an arrangement other than a lease, the occupier of the land is liable to pay water service charges (other than trade waste charges) for the Māori land unless the arrangement provides for the owners or trustees to pay the water services charges.

Māori reservation land or land on which marae or urupā located

106 Proposed section 322 makes no reference to Māori reservation land or land on which marae or urupā located.

107 The Trust Board thinks it appropriate that a bespoke arrangement is developed for liability for water services, if any, for this special category of whenua.

108 **Relief sought:** We consider that it is appropriate for the WSL Bill to provide for regulation-making powers to accommodate bespoke arrangements for this category of whenua, and recommend an addition to proposed section 210(1) as follows:

(g) providing for water services charging arrangements, which may include charging exemptions, relating to Māori reservation land or land on which marae or urupā are located.

Limitation on trustee liability

109 The policy intent behind new section 323 of the 2022 Entities Act appears to be that:

a. trustees of a Māori land trust are not personally liable for water services charges in respect of Māori land;

b. instead any water services charges are to be paid from any income derived from the land and received by the trustees on behalf of the beneficial owner or owners; and

c. if the land does not produce enough income to pay the charges, trustees can provide evidence to the water services entity of trust income and they will only be required to pay the amount that the trust income can accommodate.

110 **Relief sought:** The Trust Board supports the retention of the intent of this provision. Not all Māori land trusts produce income. Further, to hold the trustees personally liable would discourage owners from acting as trustees or putting land into trust.

111 However, we do consider that amendment is required to new section 323 to make the clause clearer and to meet the policy intent. In particular:

a. Expressly stating that trustees are not personally liable is particularly important, as most Māori land trusts do not have a corporate trustee.

b. The reference to income should be amended to make clear that it is to 'net income' (i.e. income less expenses) as opposed to gross income, which does not subtract expenses. This is consistent with the policy intent that no payment is required if the trust does not have the funds.

c. The clause should be clarified to confirm that the charges do not accumulate across income years.

112 We suggest the following amended section 323:

323 Limitation on trustee liability

(1) Trustees are not personally liable for water services charges.

(2) Liability for charges in any given income year is limited to the amount equal to the net income derived from the land and received by the trustees on behalf of the beneficial owners of the land. For the avoidance of doubt, unpaid charges do not accumulate from income year to income year.

(3) Trustees seeking to rely on subsection (2) must, on request by a water services entity, provide copies of any annual financial statements provided to the beneficial owners by the trustees.

(4) This section applies to all trustees who hold or manage Māori land under section 322.

Charging principles

113 Proposed section 331 of the 220 Entities Act sets out the principles that must be considered by a water services entity board when setting charges.

114 The Trust Board specifically supports the following principles:

a. charging different groups of consumers differently (only) if those groups receive different levels or types of services; and

b. the board may set lower charges (including no charges) for particular consumers to remedy inequities in the provision of services.

115 **Relief sought:** We support the retention of this provision. Many isolated or rural Māori communities receive sub-standard infrastructure support from local government. For example, we're aware that one shoreline settlement within our rohe has rightly identified that the services provided by Taupō District Council are limited (to rubbish collection at this time) and as such argued that the rates should be reflective of the services provided. In such circumstances, these communities should not be expected to pay charges commensurate with city or town supply consumers.

Obligation to review and publish charges

116 Under proposed section 332 the board of a water services entity must publish the charges that apply to its annual billing period and any changes to them.

117 However, the board is not required to do so in respect of charges that the board considers to be customised or otherwise unusual.

118 **Relief sought:** The Trust Board does not support this provision. It is important that transparency is retained with respect to customised or unusual charges, which should be able to be justified, to maintain fairness.

Chief Executive of water services entity may discount charges

119 Proposed section 333 permits the chief executive of a water services entity may discount any charges that the entity's board has set, a power which overrides the board's authority to set charges and the charging principles.

120 **Relief sought:** The Trust Board supports the retention of this provision. It allows flexibility for discounts to be made on a case-by-case basis.

Charges for water services may be averaged geographically

121 Proposed section 334 authorises a board of a water services entity to charge geographically averaged prices for the water services, or charge geographically average prices at different scales for different service types and different classes of consumers.

122 It also permits a board not to charge a geographically averaged price for certain reasons, including that communities receive a higher or lower level of service than is generally provided elsewhere within those boundaries, or a water services entity has taken over a failed drinking water supplier.

123 **Relief sought:** The Trust Board supports the retention of this provision. Again, it allows flexibility to meet the needs of isolated or rural Māori communities where there is limited service provision available to them.

Powers of entry and inspection

124 Proposed section 371 gives compliance officers power to enter onto property for specified purposes related to their role:

a. Where the property is a Māori reservation, or marae or urupā land, the section requires the compliance officer to obtain the consent of the owner.

b. If the property is Māori land, the compliance officer must give reasonable written notice to the owner or owners before going onto the property.

c. If the land is Māori land owned by more than 10 people with no clear management structure or trust, the compliance officer must give the reasonable written notice to the trustees of the principal marae of the hapū associated with the land before entering onto the property.

d. If the land is a reserve vested in a PSGE and managed by another body than the PSGE, notice must be given to both the PSGE and the managing body.

125 Powers must be exercised in accordance with the Search and Surveillance Act 2012, which requires a search warrant.

126 The Trust Board supports the prohibition on entering into reservation, marae, or urupā land without permission of the owners. These can be wāhi tapu and have cultural protocol which must be observed by the person entering onto the land. Contacting the trustees prior to going onto the land ensures that the necessary tikanga can be communicated to the compliance officer or an appropriate person can accompany the compliance officer.

127 We are concerned about the notification requirements for Māori land set out in new section 371(7) and consider they should be amended. In particular, the provision allows the trustees of the principal marae of the hapū associated with the land to be notified before a compliance officer enters onto Māori land with more than 10 owners and no clear management structure. As stated above, we consider notification to those trustees cannot replace notification to the owners of the land.

128 Further, for the reasons identified above, we do not support the very limited reference to land vested in a PSGE under a Treaty settlement Act and managed by an administering body that is a local authority.

129 **Relief sought:**

a. Proposed sections 371(6) and (8) should be merged and amended as per our submission points above on works on Māori land (i.e incorporating the new definition of "other Māori land". New proposed section 371(6) should read:

(6) A compliance officer must not enter any <u>other</u> Maori land unless, before entering, the compliance officer has given reasonable notice in writing to the owner (or owners) of

the land.

b. Proposed section 371(7) should be amended. Given the provision concerns entry and inspection of whenua we consider that notice to the marae (not just the principal marae) of the hapū associated with the land could assist in notifying the owners. However, that should occur after reasonable efforts are made to contact some of the owners listed on the Māori Land Court Records. We suggest the following wording:

> (7) However, if the land referred to in subsection (6) is owned by more than 10 persons with no clear management structure or is owned by more than 10 persons and not vested in a trustee, the compliance officer must not enter the land unless, before entering the compliance officer:
>
> a. has reasonably attempted to contact the owners listed on the Māori Land Court records; and
>
> b. has given reasonable notice in writing to the trustees of the marae of the hapū associated with the land; and
>
> c. published a notice on an Internet site maintained by or behalf of the Maori Land Court or in the Maori Land Court Pānui (or both) relating to its intention to enter and inspect the land; or
>
> d. served notice on the Registrar of the Maori Land Court in accordance with section 181 of Te Ture Whenua Maori Act 1993 of its intention to enter and inspect the land.

Power to enter place without search warrant

130 Proposed section 372 gives a compliance officer a power to enter onto property without a search warrant despite new section 371, if the compliance officer reasonably believes the search is required in relation to a specified serious risk. A specified serious risk includes serious risk of illness, injury or death, to public health, and to water services infrastructure. The same notice requirements set out in new section 371, in relation to Māori land, apply.

131 **Relief sought:** We repeat our concerns as above and oppose this section.

Protection of Māori land against execution for debt

132 Proposed section 388 maintains the rule set out in Te Ture Whenua Māori Act that Māori land or an interest in Māori land cannot be used to discharge a debt held by that person. Where remedial or other action has to be undertaken on the person's land and the Court orders the owner of the land must pay for it, or where a person is fined for an offence under the 2022 Entities Act, the person's interest in Māori land cannot be used for payment. This protection does not apply to any money made from the person's interest in Māori land and received by them.

133 **Relief sought:** The Trust Board supports retention of this provision. This maintains the principle, set out in Te Ture Whenua Māori Act, that Māori land cannot be used to discharge a debt to avoid further land loss.

Publication requirements

134 Proposed section 465 directs that specified documents[38] must be publicly notified together with a report on how, among other things, the document gives effect to:

[38] Any rule, requirement, restriction, plan, strategy, or other instrument specified in the WSE Act.

a. the principles of te Tiriti o Waitangi; and

b. Te Mana o te Wai (to the extent that Te Mana o te Wai applies to the relevant duties, functions, and powers).

135 **Relief sought:** The Trust Board requests the retention of this section.

SUBMISSIONS ON THE EECP BILL

136 The EECP Bill establishes an economic regulation and consumer protection regime for the three waters sector, with the Commerce Commission (the **Commission**) as the regulator.

137 The Trust Board generally supports the policy intent and provisions of the Bill. Independent scrutiny of the water service entities is critical. Our only concern, under which all our proposed amendments fall, is to elevate Te Mana o te Wai within the EECP Bill. We confirm that the concerns outlined, and amendments proposed, are made with the regulatory role of the Commission in mind.

Matters to be considered by Commission and Minister

138 Clause 5 of the EECP confirms that the Commission or Minister must, in making a recommendation, determination, or decision, "take into account" the obligations of regulated water services providers, including with respect to te Tiriti o Waitangi/the Treaty of Waitangi, giving effect to Treaty settlement obligations and Te Mana o te Wai (its duty under clause 5(2)(c)).

139 In the 2022 Entities Act to which the Commission or Minister's powers relate, the Te Tiri o Waitangi and Te Mana o te Wai are matters which must be given effect to, and Treaty settlement obligations prevail. The Trust Board therefore finds the requirement to take into account these matters (which is procedural rather than substantive) at odds with the primacy that they are given in the primary Act.

140 We would recommend the removal of clause 5(3) as we do not consider it necessary to qualify the extent to which the Minister or Commission must take into account obligations under Te Tiriti, a Tiriti settlement, or Te Mana o te Wai.

141 **Relief sought:** We request:

a. Elevation of the weighting in clause 5 to "have particular regard to".

b. Removal of clause 5(3).

Duties of Commission relating to Te Tiriti o Waitangi

142 Clause 6 of the EECP directs that the Commission maintain systems and processes to ensure that, for the purpose of complying with its duties under clause 5(2)(c), it has the capacity and capability to:

a. uphold the principles of te Tiriti o Waitangi; and

b. engage with Māori and understand perspectives of Māori.

143 **Relief sought:** With reference to clause 5(2)(c), the obvious omissions from clause 6 are reference to upholding Treaty settlements and Te Mana o te Wai. We request an amendment to that effect as follows:

> The Commission must maintain systems and processes to ensure that, for the purpose of complying with section 5(2)(c), it has the capacity and capability to—
> (a) uphold the principles of te Tiriti o Waitangi/the Treaty of Waitangi and Te Mana o Te Wai; and

(b) uphold Treaty settlement obligations.

(c) engage with Māori and understand perspectives of Māori.

Water Services Commissioner

144 Clause 128 identifies the matters for which knowledge of, or experience in, qualifies a Water Services Commissioner for appointment.

145 **Relief sought:** The Trust Board requests that 'Te Mana o te Wai' is included in this list.

Consumer dispute resolution service

146 A dispute resolution service is established by the EECP Bill for the purpose of ensuring a person may have a dispute with their water service provider resolved. To enable disputes to be resolved, the Bill requires that the purpose of the disputes resolution service is to provide for a range of processes for dispute resolution processes including processes recognised under tikanga Māori and that implement te ao Māori approaches.[39]

147 Entities seeking to be recognised as the approved disputes resolution service must apply to the Minister for approval.[40] Criteria must be met, including proving their ability to meet the purpose for disputes resolution as set out in the Bill, before the Minister will determine which entity will be the disputes resolution service.

148 **Relief sought:** The Trust Board seeks the retention of this clause.

CONTACT

149 Please direct all communications to the Trust Board in relation to this submission to Peter Shepherd, Natural Resources Manager at peter@tuwharetoa.co.nz.

[39] EECP Bill, Schedule 2, clause 1(2).
[40] EECP Bill, Schedule 2, clause 4.