

Gore District Council (Otama Rural Water Supply) Bill

Local Bill

As reported from the Governance and Administration Committee

Commentary

Recommendation

The Governance and Administration Committee has examined the Gore District Council (Otama Rural Water Supply) Bill and recommends that it be passed with the amendments shown.

Introduction

The Gore District Council (Otama Rural Water Supply) Bill is a local bill in the name of Mark Patterson MP. The bill sets out the process required for Gore District Council to be able to transfer ownership of the Otama Rural Water Supply scheme to a new company (Otama Rural Water Limited).

The Otama Rural Water Supply scheme is currently governed by eight appointed users and an elected councillor from Waikaka ward, but the Council has legal responsibility for the scheme and undertakes the day-to-day running of it. This bill would clarify the ownership of the scheme and allow the physical assets and obligations relating to the scheme to be transferred to Otama Rural Water Limited.

Under the Local Government Act 2002, there is provision for a local council to transfer small water services to another entity. However, because the Otama scheme services an estimated 223 dwellings, it does not meet the criteria in the Local Government Act of a small water service (which is defined as 200 or fewer persons). This is why new legislation is needed to enable the transfer of the Otama scheme.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Interpretation section

Clause 4 is the interpretation section of the bill. Under the definition of scheme assets, we recommend adding “the water treatment chlorination system”. This would ensure that the scheme assets are up to date and that the chlorination system is bound by the Health Act 1956 along with the other scheme assets already listed.

Process for transferring the scheme

Clause 5 sets out the process that must be followed by the Council to enable the transfer of the scheme. Subclause (1) specifies that the Council is to conduct a referendum in accordance with section 9 of the Local Electoral Act 2001 to enable the transfer. Following the referendum, the Council must transfer the scheme to the company if the referendum receives more than 50 percent support from eligible voters.

We recommend inserting subclause (1A) to provide that the referendum must be conducted within five years of the Act coming into force. This time limit would ensure that the transfer takes place within a reasonable period and it would provide certainty to all those involved in the transfer.

Requirements on the company

Clause 8 sets out what plans and assessments the company must produce to the satisfaction of the Council before the referendum for the transfer to occur. We recommend inserting new clause 8(3) to state that the company must also provide a report to the satisfaction of the Medical Officer of Health. This report would show the company’s capacity to provide a safe drinking water supply.

Taxation and duties provision

Clause 14(1) sets out the bill’s interaction with the Goods and Services Tax Act 1985. We recommend rewording this clause to clarify that the transfer would be zero-rated for the purposes of that Act.

We also recommend removing clause 14(2) as it is redundant because the Estate and Gift Duties Act 1968 no longer affects this type of transfer.

New Zealand Labour Party view

A Three Waters review is currently under way to consider the regulation and supply of drinking water, wastewater, and stormwater. Labour Party members of the committee think that consideration of this bill should be deferred until after Cabinet announces its decisions regarding the drinking water reforms. These policy announcements are expected in June 2019. Deferring consideration would allow policy on the bill to be developed in the context of the future regulatory regime. This would allow greater certainty for the community when considering the potential transfer of the scheme. As it stands, it is difficult to determine the impact the future decisions may have on the bill and it may be difficult for Otama Rural Water Limited to provide assurance about its future ability to comply with a new regulatory regime.

Appendix

Committee process

The Gore District Council (Otama Rural Water Supply) Bill was referred to the committee on 8 August 2018. The closing date for submissions was 28 September 2018. We received and considered 26 submissions from interested groups and individuals. We heard oral evidence from 14 submitters at hearings in Gore and Wellington.

We received advice from the Department of Internal Affairs.

Committee membership

Brett Hudson (Chairperson)

Ginny Andersen

Kanwaljit Singh Bakshi

Hon Jacqui Dean

Paul Eagle

Hon Peeni Henare

Jamie Strange

Dr Jian Yang

Hamish Walker participated in much of the consideration for this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Mark Patterson

Gore District Council (Otama Rural Water Supply) Bill

Local Bill

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	4
7 Eligibility to vote in referendum	4
8 Requirements for plans and assessments	4
9 Transfer plan	5
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	6
13 Southland Regional Council to be advised of transfer	6
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	
	7

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. 5

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is— 10

(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. 15

4 Interpretation

In this Act, unless the context otherwise requires,—

Company means Otama Rural Water Limited, incorporated on 3 October 2017 under company number 6434682

Council means the Gore District Council 20

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 25

(b) includes the following plant and land:

(i) the land described in **Schedule 1**:

(ii) the Pyramid well:

(iii) the Pyramid pump station: 30

(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: 5
 - (ix) all water meters:
 - (x) the electronic control and monitoring equipment installed specifically to monitor the scheme infrastructure; ~~and:~~
 - (xi) the water treatment chlorination system; 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 10
- scheme distribution area** means the area coloured blue on the map set out in **Schedule 2**.

Part 2

15

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**.~~ 20
 - (b) the transfer is supported by more than 50% of the votes cast by the persons eligible to vote under **section 7** in a referendum conducted under section 9 of the Local Electoral Act 2001. 25
- (1A) The referendum referred to in **subsection (1)(b)** must be conducted—
 - (a) not later than the date that is 5 years after the commencement of this Act; and
 - (b) using the First Past the Post electoral system. 30
- (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,— 35
 - (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**. 5
- 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**. 10
 - (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— 15
- (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 20
 - (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 25
 - (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 30
 - (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 35

- (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. 5
- (3) In addition to the requirement under **subsection (1)(d)**, the Company must provide a report in which it assesses, to the satisfaction of the Medical Officer of Health, the Company's capacity to provide a safe drinking water supply. 10

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 15
- (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. 20

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 25

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 30
- (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 35
- (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

5

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.~~ 10

(1) A supply of goods as part of the transfer of the scheme from the Council to the Company under this Act is chargeable with tax under section 8 of the Goods and Services Tax Act 1985 at the rate of 0%. 15

(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. 20

(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. 25

(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. 30

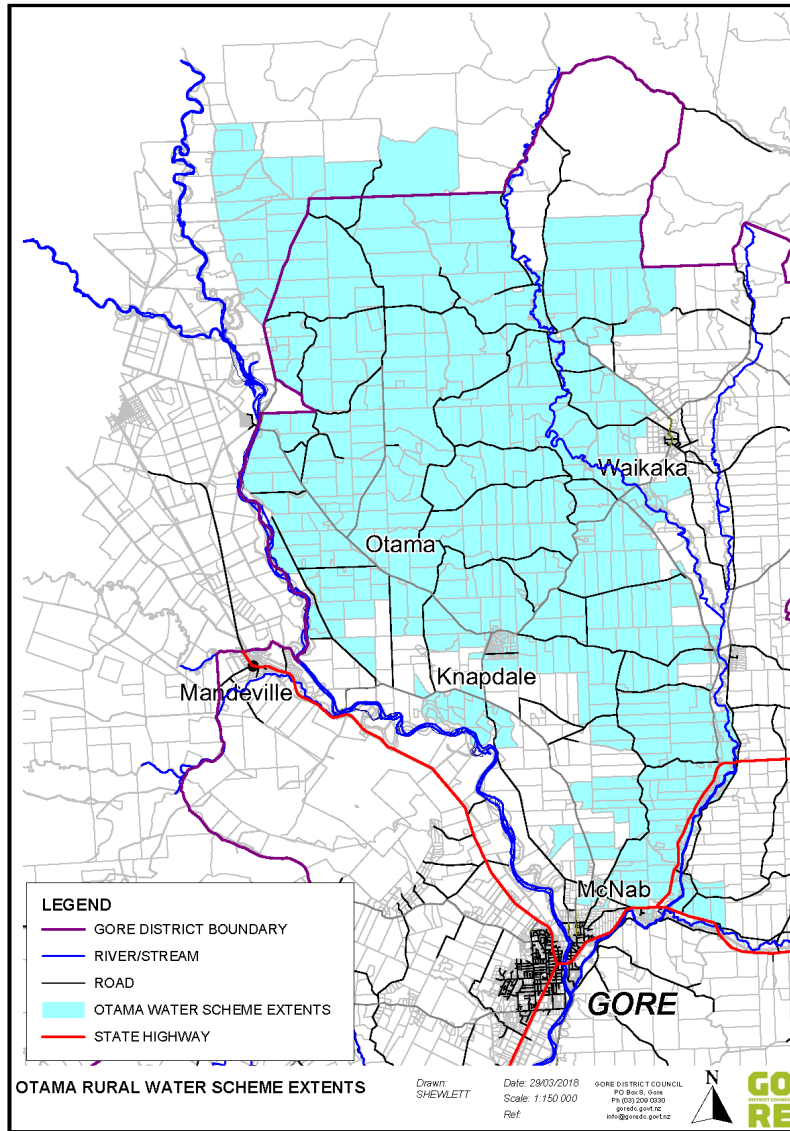
Schedule 1
Description of land on which Otama Rural Water Supply scheme
treatment plant situated

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

s 4

Schedule 2 Map of scheme distribution area

s 4



Gore District Council (Otama Rural Water Supply) Bill

Legislative history

23 July 2018
8 August 2018

Introduction (Bill 78–1)
First reading and referral to Governance and Administration
Committee