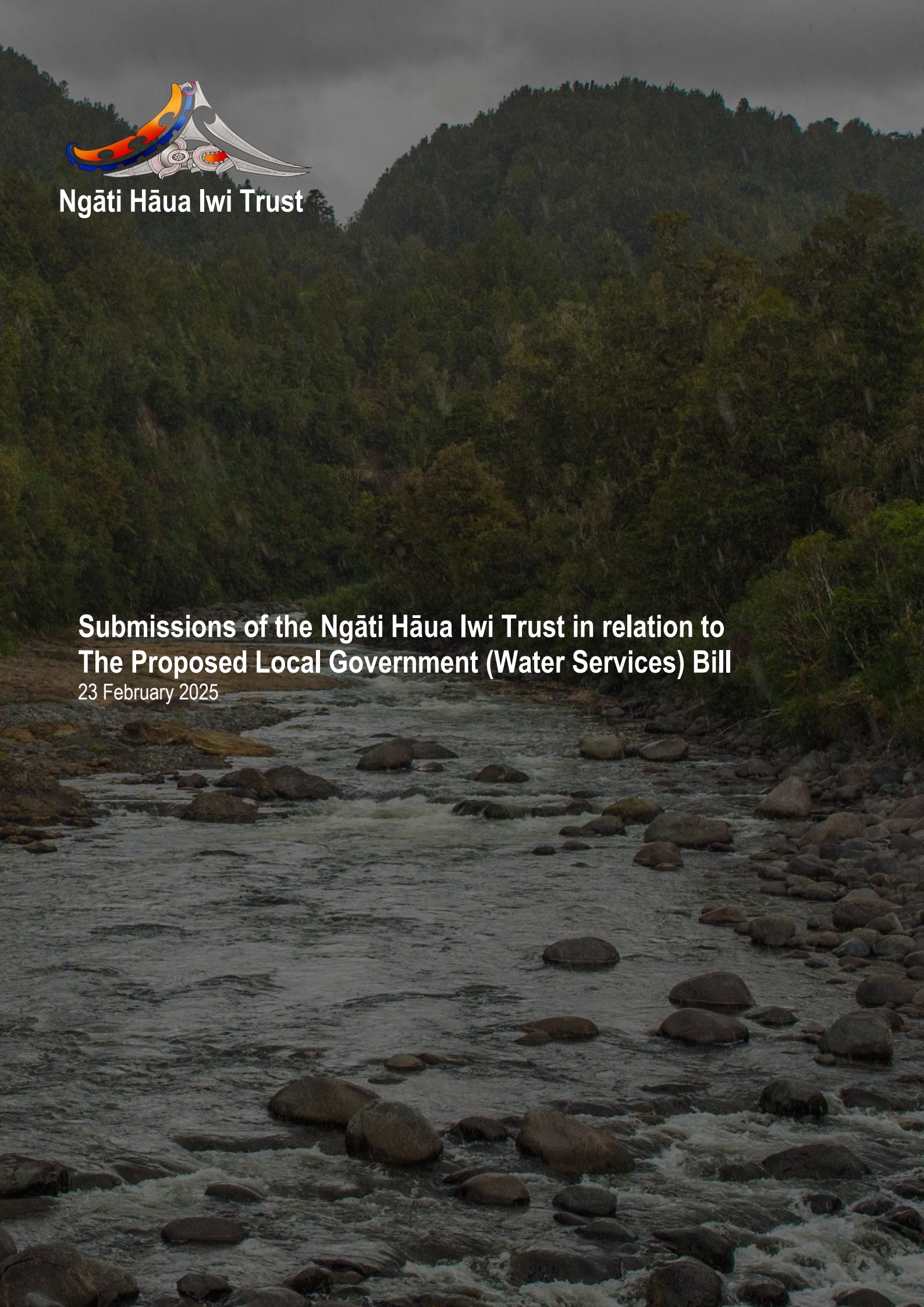

Ngāti Hāua Iwi Trust

Submissions of the Ngāti Hāua Iwi Trust in relation to The Proposed Local Government (Water Services) Bill

23 February 2025

"**Unuunu te puru o Tūhua mā ringirngi te wai o puta**"

'If you withdraw the plug of Tūhua, you will be overwhelmed by the flooding hordes of the North'
'If you withdraw the plug of Tūhua, you empty the Whanganui River'

1.0 EXECUTIVE SUMMARY

1.1 The proposed Local Government (Water Services) Bill (**Bill**) is yet another policy agenda that removes Māori participatory options within the local government context and disestablishes a value-based framework (Te Mana o te Wai) aimed at centring water itself in any decision made in relation to it. Despite the significant advancements made at the regional and district council levels in terms of Māori participation in local government decision making, the Bill cuts across that progress and generates tension between local council and iwi/hapū in a way that damages the delivery of proper policy and water services for respective communities.

1.2 The Bill is the third piece of a wider puzzle related to the delivery of water services and the control or responsibility for the same that this Government has introduced off the back of repealing three waters. In general, these new local water done well policies create significant concerns about the practicality and affordability of local government being able to deliver water services properly, without central government investment and iwi/hapū involvement. That aside, the Bill also continues on the general policy agenda of this government, which is to remove iwi/hapū from decision-making roles within any statutory framework, therefore not reflecting Te Tiriti o Waitangi (**Te Tiriti**) and the mana held by iwi/hapū in any one rohe.

1.3 To that, we are realistic that this Bill will be introduced into law, and seek several amendments to the Bill that better provide for the local context and allow that context to manifest accurately in the decision making, ownership, and control/responsibility layers within the Bill's water organisation and service frameworks. We say that proper recognition of Te Tiriti goes beyond just Treaty Settlement arrangements, but requires, as a mandatory requirement, that iwi/hapū have clear legislative provision within the general establishment frameworks.

1.4 Notwithstanding the above, we are entirely concerned with the reality that this Bill and the two before it, create an unaffordable regime for ratepayers. If New Zealand accepts that water and the provision of water is a basic right, then the policy setting should ensure that the cost to have that right maintained and preserved, be borne by all of New Zealand. In our view, the investment required by central government is significant but is available, if the political will also exists. That is to say that, this individualised approach to providing water services disproportionately effects the most vulnerable in our country and that consequence is entirely a choice by central government. This must change.

2.0 KO WAI MĀTOU

Ko Ruapehu te maunga
Ko Whanganui te awa
E rere kau mai te awanui
Mai te Kahui Maunga ki Tangaroa
Ko te Awa ko au, Ko au te Awa

2.1 Ngā hapū o Ngāti Hāua all share common whakapapa descent from Ngā Tūpuna – Paerangi, Ruatupua Nui and Hāua. Ngāti Hāua have 26 affiliated hapū within our area of interest:[1]

[1] We acknowledge hapū that have shared interests with other iwi as marked with an asterisk.

Ngāti Hāua	Ngāti Whati	Ngāti Tama-o-Ngāti Hāua	Ngai Turi
Ngāti Hauaroa	Ngāti Onga	Ngāti Ruru	Ngāti Hinetakuao
Ngāti Reremai	Ngāti Te Awhitu	Ngāti Hira	Ngāti Pareuira*
Ngāti Tū	Ngāti Wera	Ngāti Rangitauwhata	Ngāti Pikikotuku
Ngāti Hekeāwai	Ngāti Hinewai*	Ngāti Te Huaki	Ngāti Tamakaitoa*
Ngāti Keu*	Ngāti Poutama*	Ngāti Whakairi	Ngāti Pareteho*
Ngāti Kura*	Ngāti Rangitengaue		

2.2 Ngāti Hāua Iwi Trust (**NHIT**) was established in 2001, to advance and advocate for the interests of Ngāti Hāua iwi, hapū and whānau within our customary rohe. Since its inception, NHIT has represented Ngāti Hāua iwi, hapū and whānau in Waitangi Tribunal processes, Treaty settlement negotiations, Local Council matters including as an iwi authority for Resource Management Act 1991 purposes, and with respect to Ngāti Hāua interests in the Whanganui River.

2.3 On 21 November 2024 NHIT initialled a Deed of Settlement with the Crown as a redress package for the many breaches of Te Tiriti by the Crown against Ngāti Hāua. That said, the Bill before us touches an important and central kaupapa that underpins Treaty Settlements, being Te Tiriti. Therefore, it is our responsibility to hold the Crown accountable we necessary. To this end we are guided by our Pou Tikanga, particularly Rongo Niu - To hold the Crown to account – and submit this brief submission about the Bill.

3.0 TE TIRITI AND TREATY SETTLEMENT

3.1 The Bill incorrectly provides for Te Tiriti and Treaty Settlements, with the wording of clause 41 completely missing the mark as to the most appropriate construction of a Treaty clause in legislation. This wording originates from the COVID-19 Recovery (Fast-track Consenting) Act 2020. This carrying over of that wording highlights the view that Treaty provisions are seen as disabling or as inhibiting progress.[2] The pulling across of this wording is not legally contextually appropriate nor reflective of the strength of current Treaty Settlement directions like those in the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.

3.2 In our experience, the direction to act in a manner consistently with Treaty Settlements (as required by clause 41 of the Bill) provides a low-level consideration for territorial authorities and the "secretary" in its administering of the Bill, rather than requiring them to administer the Bill through a Tiriti, Treaty Principles and Treaty Settlement lens and at the direction of iwi/hapū (as is the case in Te Awa Tupua). This relegation of authority away from iwi/hapū has, in the COVID-19 Recovery (Fast-track Consenting) Act 2020 process, replicated the historic tensions between local government and iwi/hapū decision making abilities. We envisage the same occurring here, but with the likely outcome to be resistance instead of acceptance.

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[2] We note that the fast-track consenting act wording was used as it was considered anything stronger would prolong the consenting process and conflict with the very purpose of that act, which was to speed up development against the context of covid-19 restrictions and economic downfall. The problem is that such provisions wrongly approach Treaty clauses and also apply that covid-19 context to all other circumstances.

3.3 We acknowledge that there may be instances where iwi/hapū and territorial authorities have harmony in the way they work and partner (and there are avenues in the Act to protect that), however, it is a poor policy choice to leave that up to good will, and naive to think that, without clear and strongly articulated legislative direction, that outcomes could be sustained across numerous local election cycles.

3.4 Therefore, clause 41 must feature earlier in the construction of the Bill, and with the following amendments:

> **41 Water service providers to act consistently with Treaty settlement obligations**
>
> (1) A water service provider must honour and give effect to ~~act in a manner that is consistent with~~ Te Tiriti o Waitangi and Treaty settlement obligations when performing and exercising functions, powers, and duties under this Act.

3.5 We consider the above, to provide a proper platform for Te Tiriti. However, other changes are required to align with this, which we have set out below.

4.0 ISSUES IN THE NEW ENDURING POLICY SETTING

4.1 This Bill rounds out the new "enduring" policy settings for the delivery of water services. It is the most substantial as it proposes the new way in which the establishment of water organisations (who will control how water services are delivered) and the limitations on those, including the way iwi/hapū can have their mana reflected in the system.

The Purpose

4.2 The issues with the arrangements in the Bill stems from a poorly constructed purpose under clause 3, and the sole focus on economically framed outcomes. Although economic matters are important and do relate to aspects of well being of the community, the Bill (from its purpose) suggests that the way to achieve that is by ring fencing control and decision-making to territorial authorities and/or consumer trusts, while providing a narrow corridor for iwi/hapū to be involved, premised on the good will of those territorial authorities exercising a level of discretion consistent with "current" arrangements and agreements.

4.3 That could not be further from the:

(a) The expectations that flow from Te Tiriti, being the provision of partnership within the system;

(b) The reality in terms of the context that now applies to our particular rohe with respect of Treaty Settlements, particularly Te Awa Tupua (Whanganui River Claims Settlement) Act 2017;

(c) The fact that the most cost effective, affordable, financially sustainable and transparent manner to deliver water services, is where iwi/hapū:

(i) Have their mana reflected in the ownership and governance arrangements;

(ii) Are central to any decision-making; and

(iii) Are given explicit legal provision to direct a value-based framework for the above to ensure economic matters do not take precedence over environmental, cultural and societal matters.

4.4 The Bill is silent on this, and that ignorance manifests in the limited provisions set out in subpart 3.

Subpart 3

4.5 Subpart 3 sets out how a water organisation is established, what its purpose, powers and functions are (including limitations on those), how the organisation is owned and governed (including shareholding and who can own) and the exemptions that can be sought as to the application of subpart 3.

4.6 There are three critical issues with subpart 3:

(a) Per clause 36, the establishment of a water organisation is solely at the discretion of territorial authorities, including the ability to be a shareholder in one or more water organisations, unless the exemption under clause 55 is applied for by the territorial authority/ies in question. This means that decision making as to who and what type of water organisational arrangement is formed, sits solely with territorial authorities. Although iwi/hapū may be involved through a consultative process, it is entirely up to others and not a mandatory requirement to include iwi/hapū in these decisions.

(b) Per clause 37, water organisations must be wholly or partly owned by a territoriual authority, unless an exemption under clause 55 is applied for by the territorial authority/ies in question. This reiterates the point that iwi/hapū are excluded from the shareholding of a water organisation as a mandatory requirement, and leaves us at the hands of local governments to provide for something similar or of equal weight.

(c) The exemptions in clause 55 provide a narrow corridor through which iwi/hapū may be included as part of the substantive layers of ownership, governance and decision-making associated with the water organisation. Using an exemption framework as a means for providing options for iwi/hapū participation, undermines the current framework under part 2 and 6 the Local Government Act 2002 for Māori participation in local government matters, and current or future treaty settlement arrangements/agreements.

4.7 As a direct consequence of the above, the ability for Ngāti Hāua to have meaningful provision in this new water service system, is erased. We are now required to utilise a combination of options (like joint committees per clause 30, exemption applications per clause 55 and/or the consumer trustee option per clause 43) to achieve outcomes that best serve our community, which always necessitates our involvement. This is not right and will have disproportionate results for Māori in the new system, and in our view the entire locality to which any water organisation operates.

Māori Land Issues

4.8 Clauses 123-130 of the Bill sets out provision related to Māori Land or land that has an urupā or marae located on it. From the outset, provisions that provide any level of control or authority over Māori Land or land which has an urupā or marae located on it, to anyone other than the owners of that land, is alarming. The Māori Land tenure system was established to provide for the mana and rangatiratanga of Māori over their lands as taonga tuku iho (as set out in the preamble of Te Ture Whenua Māori 1993). Although the Bill's provisions in relation to Māori Land generally applies to water infrastructure already in existence, there are instances where the original placement of said infrastructure was contentions, forcibly done or was initially by agreement but has since been poorly managed resulting in harm to whenua Māori.

4.9 In addition, clause 127 provides water service providers with the ability to seek an easement over certain land by following the process under section 315-326 of Te Ture Whenua Act 1993. It is not clear what, if any, preference is afforded water services providers in this regard, but it must be assumed that preference is being given because the unique ability for a non-owner of Māori land to require an easement (which may result in the construction of infrastructure on the land) is now provided for by clause 127 of the Bill. There is a serious question as to whether or not that creates a legal tension between the inalienability of Māori reservation land and water service delivery.

4.10 In our view, the rationale in *Grace v Minister of Land Information* [2014] NZEnvC 82 suggests that where reservation land is set aside by the Māori Land Court, that that land becomes inalienable. It naturally follows that the proposal to establish an easement by a third party would require consent at every turn. That same principled approach must find its way into each of the provisions of the Bill noted above. Anything to the contrary would relitigate historic legal issues related to public works takings, which prima facie are being created by the Bill in clauses 123-130.

5.0 CONCLUSION

5.1 As above, we do not consider the Bill to provide any type of enduring policy setting that will create sustainable water service delivery. The issues traversed in this submission go to the heart of how proper ownership, governance and decision making related to water services, requires iwi/hapū participation in a meaningful way. The limited and complex narrow corridor of provision for iwi/hapū involvement and the protection of Tiriti related matters, is systematically inappropriate and will lead to a repetition of past wrongs and inefficiencies, as well as cost and affordability issues (as has been the case to date).

5.2 If this Bill is going to pass, it must be amended to provide for clear opportunities and avenues for iwi/hapū involvement in the higher levels of the structural frameworks proposed, and must protect the future arrangements that will occur through impending treaty settlement arrangements and/or constitutional reform.

5.3 We wish to speak to this submission in person.

Dated 23 February 2025