



Marlborough District Council Submission to the Ministry of Business, Innovation and Employment regarding Economic Regulation and Consumer Protection for Three Water Services

Thank you for the opportunity to submit on the Economic Regulation and Consumer Protection for Three Water Services.

Council's submission is in two parts, firstly a summary of the key points we wish to make and secondly our answers to the discussion questions that were posed in the Discussion Document, which are contained in Attachment 1.

The key points Council wishes to make are as follows:

1. Council supports the need for an economic regulator, to ensure that the monopolistic characteristics of the currently proposed four entity delivery model are kept in check and the modelled efficiencies are achieved.
2. Support the Commerce Commission taking on the role, to build on existing competencies and capacity which should result in reduced overall cost. It is expected that the Commerce Commission may want to tailor its approach specifically to the Three Waters Entities as there is no pure profit motivation and maybe require additional powers.
3. Profit is acceptable as retained earnings, depreciation and debt are the three prime sources of cash for future investment. The role of Regulator will be to keep these in balance to yield the best long-term pricing for the consumer.
4. The Regulator should be able to set efficiency targets, efficiency in this context means doing the right thing at the lowest cost, not just lowest cost. Without this the efficiencies that have been modelled may not be achieved.
5. Should have a single focus of encouraging the delivery of the best water system possible at the lowest cost. It should not have this focus clouded with objectives to address past inequalities or social inequalities, which is a role for central Government. The exception is maintaining minimum services for health reasons, similar to what is already in existing legislation. The process should be depoliticised as much as possible.
6. The Regulator is not responsible for running the business of the Water Entity. For example, the Regulator can set pricing principles and monitor compliance with those principles, but is not responsible for setting actual prices. There should be a clear separation of roles and responsibilities.
7. The pricing principles set by the Economic Regulator should include preserving the uniform pricing across individual entities as shown in the modelling presented by WICS.

I am happy to provide clarification on any of the points made in this submission.

John Leggett
Mayor

Discussion Paper - Economic Regulation and Consumer Protection for Three Waters Services in New Zealand

	Questions	Response
1	What are your views on whether there is a case for the economic regulation of three waters infrastructure in New Zealand?	Supported. Natural monopolies, have no competition to limit price. Also have no incentive to minimise costs. Under the 4 entities, there is the possibility of bench-marking but the Geophysical characteristics of each make it impossible to make realistic comparisons.
2	What are your views on whether the stormwater networks that are currently operated by local authorities should be economically regulated, alongside drinking water and wastewater?	Yes. While stormwater is very difficult to price on a user pays basis, the underlying costs should be reviewed by a third party. Also if two services are regulated and the third isn't there is the potential of costs leaking to stormwater.
3	What are your views on whether the four statutory Water Services Entities should be economically regulated?	Yes, see comment above.
4	What are your views on whether economic regulation should apply to community schemes, private schemes, or self-suppliers? Please explain the reasons for your views.	<ul style="list-style-type: none"> • Self-supplies - no • Private – no • Smaller community - no • > 5000 yes <p>For the categories where no is indicated, there is a strong linkage between owner and consumer .</p>
5	What are your views on whether the Water Services Entities should be subject to information disclosure regulation?	Yes, but make them meaningful. There are two audiences, the regulator and the public/consumer. Public/consumer measures must be understandable and meaningful.
6	What are your views on whether Water Services Entities should be subject to price-quality regulation in addition to information disclosure regulation?	Yes, but must have good consultation between the regulator and entities before they are set to avoid them bearing too theoretical.
7	What are your views on the appropriateness of applying individual price-quality regulation to the Water Services Entities?	Yes as each entity is so different geophysically.

	Questions	Response
8	A) Do you consider that the economic regulation regime should be implemented gradually from 2024 to 2027, or do you consider that a transitional price-quality path is also required?	Transitional price quality path, supported. Regulator needs to fully understand each Entities business first.
	B) If you consider a transitional price-quality path is required, do you consider that this should be developed and implemented by an independent economic regulator, or by Government and implemented through a Government Policy Statement?	The regulator is preferred as it will have to build on this transitional work to arrive at its long term frameworks. It is accepted that the first attempt will not be perfect, so aim for an 80:20 KISS approach here as we already know what current costs are and what forecast costs will be from the WICS modelling already undertaken.
9	A) What are your views on whether the Minister of Commerce and Consumer Affairs should be able to reduce or extend the application of regulation on advice from the economic regulator?	Yes, times and circumstances change. Regulations must be kept up to date and relevant.
	B) What factors do you consider the economic regulator should include in their advice to the Minister?	Agree with the information identified in paragraph 90 as a minimum. The regulator should also be able to provide other advice as they see it. In reality it would be unlikely that a minister would constrain themselves, by “ would only be able to extend or reduce the application of economic regulation following advice from the Regulator on: ”
10	A) What are your views on whether the purpose statement for any economic regulation regime for the water sector should reflect existing purpose statements in the Telecommunications Act and Part 4 of the Commerce Act given their established jurisprudence and stakeholder understanding?	The purpose statement should have a consistent theme/message with the Acts identified, but also recognise the service at minimum price versus profit objectives.
	B) What are your views on whether the sub-purpose of limiting suppliers' ability to extract excessive profits should be modified or removed given that Water Services Entities will not have a profit motive or have the ability to pay dividends?	The sub-purpose should be retained as entities will still need to generate profits. Profits are one source of capital for investment along with depreciation and debt. It is important to maintain and appropriate Debt/Equity Balance to maintain credit rating and low debt costs.
	C) Are there any other considerations you believe should be included in the purpose statement, or as secondary statutory objectives?	No.

	Questions	Response
	D) What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori, should be factored into the design of an economic regulatory regime for the three waters sector?	Treaty Principles should be taken account of in governance and competency. Limited involvement elsewhere as it has the potential for conflicting objectives. It is not believed that this is the place to address historic inequities. This is a go forward initiative. Same Levels of Service, same \$\$\$ within entities. Ability to pay and other social concerns are a Government issue.
11	What are your views on whether a sector specific economic regulation regime is more appropriate for the New Zealand three waters sector than the generic economic regulation regime provided in Part 4 of the Commerce Act?	The Commerce Commission is preferred as it already caters for a wide diversity of industries, airports, telecom and electricity. The other benefits of using the Commerce Commission are economies of scale, established principles, practices and procedures.
12	What are your views on whether the length of the regulatory period should be 5 years, unless the regulator considers that a different period would better meet the purposes of the legislation?	Agree with 5 year term.
	A) What are your views on whether the economic regulator should be required to develop and publish input methodologies that set out the key rules underpinning the application of economic regulation in advance of making determinations that implement economic regulation?	The regulator will sooner or later be required to develop and publish its methodologies, so the cost should be relatively neutral over the longer term. From an entity and regulator perspective trying to arrive at a determination in a changing environment could be very frustrating and costly especially if rework is required.
13	B) What are your views on whether the economic regulator should be able to minimise price shocks to consumers and suppliers?	The regulator can have input, but ultimately the decision is the entity's. To do otherwise would mean that the regulator is making one of the key business decisions. Does that shift responsibility/accountability for financial outcome to the regulator? In local government, some Council's deferred infrastructure investment and rates increases, unfortunately it was never quite the time to correct that situation.
	C) What are your views on whether the economic regulator should be required to set a strong efficiency challenge for each regulated supplier? Would a strong 'active' styled efficiency challenge potentially require changes to the proposed statutory purpose statement?	Agreed. Efficiency has been assumed in "all modelling" done to date. If an efficiency challenge is not there, then assumed efficiencies may not arise.

	Questions	Response
14	A) What do you consider are the relevant policy objectives for the structure of three waters prices? Do you consider there is a case for parliament to directly control or regulate particular aspects in the structure of three waters prices?	Having Government control etc, defeats the purpose of having a regulator. It also brings politics into the equation which may have short term objectives that are inconsistent with the longer term objectives of the entity's as they strive to achieve the outcomes of the 3 Waters Reforms.
	B) Who do you consider should have primary responsibility for determining the structure of three waters prices: a) The Water Services Entity, following engagement with their governance group, communities, and consumers? b) The economic regulator? c) The Government or Ministers?	The Water Services Entity, following engagement with their governance group, communities, and consumers – See the comment on Question 13B.
	C) If you consider the economic regulator should have a role, what do you think the role of the economic regulator should be? Should they be empowered to develop pricing structure methodologies, or should they be obliged to develop pricing structure methodologies?	Agree with paragraph 124. The Regulator should put greater emphasis on efficiency objectives with equity and fairness being addressed through targeted tools such as social welfare benefits. The regulator could develop pricing structure guidelines and high level pricing principles.
15	What are your views on whether merits appeals should be available on the regulators decisions that determine input methodologies and the application of individual price-quality regulation?	Yes appeals should be available, the regulator should not be above challenge. Agree with the direction taken in paragraph 135. Also agree with the direction taken in paragraph 131, where an amended determination would be “materially better”, to avoid frivolous claims and claims that are intended to delay.
16	Do you broadly agree that with the compliance and enforcement tools? Are any additional tools required?	Fines, will just get passed through to Consumer and that is not good. An additional suggested tool is the ability of the regulator to recommend to minister that the Board of Directors gets replaced.
17	Who do you think is the most suitable body to be the economic regulator for the three waters sector? Please provide reasons for your view.	Commerce Commission – the answer to question 11.

	Questions	Response
18	What are your views on whether the costs of implementing an economic regulation regime for the three waters sector should be funded via levies on regulated suppliers?	Initial establishment costs should be borne by Government. Ongoing maintenance by the entities.
19	Do you think that the levy regime should: A) Require the regulator to consult on and collect levy funding within the total amount determined by the minister? OR B) Require the ministry to consult on the levy (on behalf of the minister) and collect levy funding within the total amount determined by the minister?	A is preferred. B adds an unnecessary layer of involvement by government officials which would increase both time and cost.
20	Are there any other levy design features that should be considered?	Again this is challenging because of the differences between entities. A budget (time & \$\$\$) should be set based on the expected time and expertise needed. That budget can then be exceeded if the regulator can demonstrate that the entity's systems, processes availability of information, or lack thereof means that the Regulator is required to spend more time. Variations on budget should be disclosed.
21	A) What are your views on whether additional consumer protections are warranted for the three waters sector? B) What are your views on whether the consumer protection regime should contain a bespoke purpose statement that reflects the key elements of the regime, rather than relying on the purpose statements in the Consumer Guarantees Act and Fair Trading Act? If so, do you agree with the proposed limbs of the purpose statement?	Agree with the direction taken in paragraphs 163 and 166. Specific statement – others are too generic.
22	What are your views on whether the consumer protection regulator should be able to issue minimum service level requirements via a mandated code that has been developed with significant input from consumers?	Makes sense, with input from entities as well.
23	What are your views on whether the consumer protection regulator should also be empowered to issue guidance alongside a code?	Guidance should be provided.

	Questions	Response
24	What are your views on whether it is preferable to have provisions that regulate water service quality (not regulated by Taumata Arowai) in a single piece of economic regulation and consumer protection legislation?	Yes do not want it all over the place.
25	What are your views on whether minimum service level requirements should be able to vary across different types of consumers?	While not ideal, pragmatically the answer is yes.
26	What are your views on whether the regulatory regime should include a positive obligation to protect vulnerable consumers , and that minimum service level requirements are flexible enough to accommodate a wide range of approaches to protecting vulnerable consumers?	Need to define "vulnerable consumers". It is understood that there are already provisions in the Health Act that cover this. The definition should not be extended to cover financial instability or low financial resilience etc, these should be addressed by central government as part of the welfare system.
27	What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori, should be factored into the design of a consumer protection regime for the three waters sector?	Consumer protections should be the same for all consumers, we are going forward and this is not about addressing historic issues.
28	A) Do you consider that the consumer protection regime should apply to all water suppliers, water suppliers above a given number of customers, or just Water Services Entities? Could this question be left to the regulator?	Good in principle if the consumer is not an owner/member of the scheme and above 100-500.
	B) Do you support any other options to manage the regulatory impost on community and private schemes?	N/A.
29	Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?	As identified earlier, the regulator should have the ability to recommend to the minister the replacement of the board.
30	Do you agree with our preliminary view that the Commerce Commission is the most suitable body to be the consumer protection regulator for the three waters sector?	Yes.
31	What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?	The incentive will occur naturally without further incentive, as high quality engagement enables a more constructive relationship with stakeholders, reduced servicing of disgruntled consumers and faster agreement on proposals.

	Questions	Response
32	What are your views on whether there is a need to create an expert advocacy body that can advocate technical issues on behalf of consumers?	See answer to question 33.
33	What are your views on whether the expert body should be established via an extension to the scope of the Consumer Advisory Council's jurisdiction?	The Consumer Advisory Council could engage consultants from time to time to provide technical advice. This approach would avoid the cost of setting up another body.
34	What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?	This could be a lower cost regime that resolving issues through the Courts.
35	What are your views on whether these kinds of disputes should be subject to a dispute resolution schemes? Are there any other kinds of issues that a consumer dispute resolution provider should be able to adjudicate on?	Agree with the direction outlined in paragraph 227.
36	What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?	Same as the answer to question 34. There should be the ability to restrict the access to this scheme by recidivist complainants
37	Do you consider that a new mandatory statutory consumer disputes resolution scheme should be achieved via a new scheme or expanding the jurisdiction of an existing scheme or schemes?	Expand existing scheme.
38	Do you consider that the consumer disputes resolution schemes should apply to all water suppliers, water suppliers with 500 or more customers, or just Water Services Entities?	All as there are often disputes between neighbours and there needs to be an avenue to resolve these disputes without going to court.
39	Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?	Having the scheme itself provides incentive.
40	Do you consider that there should be special considerations for traditionally under-served or vulnerable communities? If so, how do you think these should be given effect?	No – this is an issue for the welfare system.

	Questions	Response
41	What are your views on whether the costs of implementing a consumer protection regime for the three waters sector should be funded via levies on regulated suppliers?	Yes supplement by application fees.
42	Do you think that the levy regime should: A) Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR B) Require the Ministry to consult on the levy (on behalf of the Minister) and collect levy funding within the total amount determined by the Minister?	Option A, for the same reasons provided earlier.
43	Are there any other levy design features that should be considered?	None that come to mind.
44	Do you consider that <i>regulatory charters</i> and a <i>council of water regulators</i> arrangements will provide effective system governance? Are there other initiatives or arrangements that you consider are required?	Having the two regulators provides a healthy balance with the monopolistic tendencies of the entities. No other initiatives come to mind, in fact future regulation risks the efficiencies of the entities.
45	Do you consider it is useful and appropriate for the Government to be able to transmit its policies to the economic and consumer protection regulator(s) for them to have regard to?	Yes.
46	What are your views on whether the economic and consumer protection regulator should be able to share information with other regulatory agencies? Are there any restrictions that should apply to the type of information that could be shared, or the agencies that information could be shared with?	Yes, this will improve the learning across all regulators.