



# NGĀTI WHĀTUA ŌRĀKEI

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Competition and Consumer Policy  
Building, Resources and Markets  
Ministry of Business, Innovation & Employment  
PO Box 1473  
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**Via email: [economicregulation@mbie.govt.nz](mailto:economicregulation@mbie.govt.nz).**

19 December 2021

## **Re: Discussion paper: Economic Regulation and Consumer Protection for Three Waters Services in New Zealand, 27 October 2021**

### 1. About Ngāti Whātua Ōrākei

Ko Māhuhu-ki-te-rangi te waka

Ko Maungakiekie te maunga

Ko Waitematā te moana

Ko Ngā Oho, ko Te Taoū, ko Te Uringutu ngā hapū

Ko Ngāti Whātua te iwi Tāmaki Makaurau e ngunguru nei!

- 1.1. Ngāti Whātua Ōrākei is one of the hapū from the wider Ngāti Whātua iwi, which extends from Maunganui in the north to Tamaki in the south. We have approximately 6,000 hapū members throughout Aotearoa New Zealand and around the world. Located in and around the Tāmaki isthmus, in the largest city in Aotearoa, we hold firm to our history, culture, identity and language.
- 1.2. Occupation by Ngāti Whātua ki Tamaki of Tāmaki Makaurau began in the mid-18th Century under the leadership of our Rangatira, Tuperiri. As such, every member of Ngāti Whātua Ōrākei can trace their whakapapa to Tuperiri and are descended from the 3 hapū (sub-tribes): Ngāoho, Te Taoū and Te Uringutu, collectively referred to today as Ngāti Whātua Ōrākei.
- 1.3. We are the tangata whenua of Tamaki with our mana over the land sea being underpinned by take tupuna (ancestral relationships), take raupatu (taking of the land and sea by traditional warfare), ahi ka (unbroken occupation) and tuku whenua (traditional gifting of land).



- 1.4. The Ngāti Whātua rohe is unique in its positioning, situated on the central Auckland Isthmus between the Manukau, Waitemata and Kaipara Harbours, and bordered by the Waitakere and Hunua ranges that serve as Auckland's watersheds. The rohe of Ngāti Whātua includes the Kaipara, the largest harbour in the Southern Hemisphere, and the landing place of our ancestral waka, Māhuhu-ki-te-rangi.
- 1.5. Today, Ngāti Whātua Ōrākei is an urban based hapū, host to Aotearoa's most populated urban centre with 1.6 million residents, 34% of the nation's population, the second largest port and the largest international airport.
- 1.6. Ngāti Whātua Ōrākei is guided by the vision –Kia rere arorangi te kāhu pōkere, ki ngā taumata tiketike - to soar and fly to the highest heights. Our ambition is to be a thriving and prosperous hapū that are leaders in our communities, Tāmaki, and throughout Aotearoa.

## 2. The Discussion Paper: Economic Regulation and Consumer Protection for Three Waters Services in New Zealand (27 October 2021)

- 2.1. Ngāti Whātua Ōrākei acknowledges the Ministry of Business, Innovation & Employment for producing the Discussion Paper: Economic Regulation and Consumer Protection for Three Waters Services in New Zealand, 27 October 2021. This document serves as a useful basis for engagement.
- 2.2. In our reply, rather than following the set questions, we wish to focus on a select number of key issues. These are:
  1. The need for economic regulation
  2. The particular case of stormwater
  3. Te Mana o te Wai and the need for regulatory integration
  4. Who should be the regulator?

## 3. The need for economic regulation

- 3.1. We agree with the Government's view that there is a strong case for economic regulation of the three waters infrastructure. Hitherto, some degree of moderation has been embodied via local government electoral accountability, but the new water entities will operate outside that control. Some form of fiscal accountability is therefore required.
- 3.2. We agree that with the analysis leading to the conclusion on p. 27 of the Discussion Document '*...that the application of economic regulation should be restricted to the new Water Services Entities and not apply to community schemes, private schemes, or self-suppliers.*'
- 3.3. The need for regulation directly attaches to the creating of market monopolies, private supplies do not fall within this ambit.

- 3.4. It will be important to make sure the long-term interests of consumers are not at the expense of our taiao [te mana o te wai, te oranga o te taiao]. Examples included overallocation issues that led to iwi not being able to have equitable and Te Tiriti compliant allocation due to the poor existing management. Equity will be key here.
- 3.5. Information disclosure should be included alongside the economic regulation<sup>1</sup>. This information should be made available to hapū and iwi to help inform the impact of the new structures and processes, the assessment of delivery of outcomes, and the ongoing assessment of how on the entities and processes give effect to te mana o te wai / oranga o te taiao in balance with economic regulations.

## 4. The particular case of stormwater

- 4.1. For drinking water and (although less so) waste water, there is a clear connection between the level of service and paying customer - this is not so for stormwater.
- 4.2. For drinking water, service standards are immediately evident – this is less so for waste water, and for stormwater the direct link between “consumer” and “service” is almost entirely absent. This creates a risk of stormwater being “out of sight and out of mind” (less so for flood control, but definitely in terms of environmental quality). There will be a strong incentive for the water entities to minimise expenditure on stormwater quality (and thus bills to consumers) – this needs to be guarded against.
- 4.3. Design of economic regulation for stormwater will also need to be careful not to introduce disincentives - for example, if investment in stormwater infrastructure triggers regulation and compliance costs that would be avoided absent said investment.
- 4.4. Stormwater “management” schemes can have wider social and environmental benefits. An excellent example of this is Te Auaunga (Oakley Creek) in Auckland. The following is an extract from the project website<sup>2</sup>:

*Te Auaunga is an Auckland Council Healthy Waters project in Mt Roskill, Auckland that prevents flooding from nearly 200 homes in three Local Board areas, enables housing intensification in a brownfield site, and has established a river park along Te Auaunga.*

*The project includes shared pathways and pedestrian bridges, community orchards, an outdoor classroom, and community fale and atea space. Natural play areas were introduced, with ngā taonga tākaro to interpret the environmental and cultural narratives of the site.*

*Of note are the inclusion of social procurement initiatives, involving training and employment of local young people in the project, and establishment of a native nursery social enterprise. The key social procurement objectives of Te Auaunga were*

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<sup>1</sup> Refer Discussion document papa 73

<sup>2</sup> <https://www.boffamiskell.co.nz/project.php?v=te-auaunga-walmsley-and-underwood>

*primarily to ensure social and economic outcomes could be delivered over and above the infrastructural improvement.*

- 4.5. It is critical that such collateral benefits of stormwater management are not impeded by regulatory frameworks.

## 5. Te Mana o te Wai

- 5.1. Te Mana o te Wai is now established as central government policy via the National Policy Statement for Freshwater Management 2020.
- 5.2. This is reinforced via direct legislation in the Taumata Arowai–Water Services Regulator Act 2020<sup>3</sup>, and again in Government proposals for the 3 Waters Entities<sup>4</sup>
- 5.3. We wish to acknowledge the Government of New Zealand for this initiative, and appreciate political courage that underpins it. The establishment of Te Mana o te Wai puts Aotearoa at the forefront of institutional environmental protection measures, and also in terms of meaningful dialogue with indigenous peoples. It stands against decades, if not centuries, of prior neglect.
- 5.4. It is now crucial that Te Mana o te Wai is carried forward into the economic regulatory framework - environmental regulation and economic regulation are intrinsically connected.
- 5.5. The economic regulator needs to have water expertise and at heart be focused on Te Mana o te Wai. (this is picked up in the discussion document in its coverage of price-quality regulation (p29)).

## 6. Integrated economic and environmental regulation – who should be the regulator?

- 6.1. We think that all this points to integrated regulation under Taumata Arowai, rather than Commerce Commission or (yet) another new body. This would enable environmental and economic cost and benefits to be assessed as a whole, whilst retaining system efficiency.
- 6.2. Conversely, setting up separate bodies for environmental and economic regulation risks setting up tensions between the two regulatory bodies – who would hold the “trump card”?
- 6.3. The Discussion Document raises independence of the economic regulator as a concern: *Taumata Arowai is a Crown Agent that must give effect to Government policy when directed by the responsible Minister* (discussion document p 51) – but at heart the balance between environmental performance and economic cost is a political one - what counts is transparency and accountability.
- 6.4. We note that in any event, the Water Services Entities Bill *“enables the Minister to make a Government policy statement setting out the Government’s overall direction and priorities for*

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<sup>3</sup> Water Services Regulator Act 2020, s.4, s.5, s.10, s.17, s.18

<sup>4</sup> Water Services Entities Bill, “Exposure Draft”, 7 December 2021

*water services, to inform and guide agencies involved in, and the activities necessary and desirable for, water services. A water services entity must give effect to the statement when performing its functions.”<sup>5</sup>*

- 6.5. This means that the Government policy statement sets overall policy direction, to which the regulator, in any case, must conform. Any “independence” of the regulator, is therefore, to a large extent academic.

## 7. Summary

- 7.1. We agree that economic regulation of the proposed water entities is desirable;
- 7.2. Regulation should be confined to the water entities (these being the monopoly institutions);
- 7.3. Te mana o te Wai is paramount;
- 7.4. This applies particularly to stormwater regulation, where natural incentives may lead to underinvestment;
- 7.5. Regulation of environmental outcomes and economic cost cannot readily be disassociated, leading to Taumata Arowai as the natural choice of regulator.
- 7.6. For queries or further information, please contact:

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<sup>5</sup> Water Services Entities Bill, Exposure Draft, p. 6 (and Pt. 4)