



**RESPONSE TO THE
MINISTRY OF BUSINESS, INNOVATION &
EMPLOYMENT**

**Economic Regulation and Consumer Protection for Three
Waters Services in NZ**

20 December 2021

This response is filed for Waikato-Tainui by:

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INTRODUCTION

1. This response is made on behalf of Te Whakakitenga o Waikato Incorporated (formerly known as Waikato-Tainui Te Kauhanganui Incorporated).
2. Te Whakakitenga o Waikato Incorporated (Waikato-Tainui) is the governing body for the **33 hapuu and 68 marae** of Waikato and manages the tribal assets for the benefit of over **80,000** registered tribal members.
3. Waikato-Tainui provides this response to the Economic regulation and consumer protection for three waters services in NZ on behalf of our hapuu and iwi members.
4. We recognise there are still significant areas of development and/or consideration to be made with regards to the economic regulator and consumer protection for three waters services in NZ. To this end, our response to this bill is based on the information provided to date and is subject to review and further commentary over the upcoming months.
5. Our response is structured as follows:
 - a. Background to Waikato-Tainui.
 - b. Waikato-Tainui concerns regarding lack of Crown engagement.
 - c. Waikato Tainui response to questions outlined in the submission template
 - f. Concluding comments.

BACKGROUND TO WAIKATO-TAINUI

6. Waikato-Tainui marae are kaitiaki of their environment and regard the holistic integrated management of all elements of the environment (such as flora, fauna, land, air and water) with utmost importance.
7. Waikato-Tainui are tangata whenua and exercise mana whakahaere within our rohe (tribal region). Our tribal rohe is bounded by Auckland in the north and Te Rohe Potae (King Country) in the south and extends from the west coast to the mountain ranges of Hapuakohe and Kaimai in the east. Significant landmarks within the rohe of Waikato include the Waikato and Waipaa Rivers, the sacred mountains of Taupiri, Karioi, Pirongia and Maungatautari, and the west coast harbours of Whaaingaroa (Raglan), Manukau, Aotea and Kawhia moana, the eastern areas of Tikapa Moana (Firth of Thames), and principally, New Zealand's longest river, Te Awa o Waikato.
8. We acknowledge and affirm the intrinsic relationship of Waikato-Tainui with our natural environment.
9. Waikato-Tainui entered into a Deed of Settlement regarding our Waikato River claim under Te Tiriti o Waitangi in 2008 ("2008 Settlement"). This was followed by the signing of a revised Deed in 2009 and ultimately, enactment of the Waikato- Tainui Raupatu (Waikato River) Settlement Act 2010 ("Settlement Act"). The settlement marked the genesis of the Crown's statutory recognition of Te Mana o te Awa and the establishment of a "co-management" approach between Waikato-Tainui and the Crown regarding matters relating to the Waikato River.
10. Waikato-Tainui is concerned about parts of the proposed Bill and wants to ensure that:
 - a. The Bill does not adversely affect the rights, interests, responsibilities and opportunities of Waikato-Tainui

- b. The co-management principles that underpin our 2008 Settlement and the Settlement Act are recognised and upheld: and

WAIKATO-TAINUI CONCERNS REGARDING LACK OF CROWN ENGAGEMENT

11. Waikato-Tainui has a range of rights and interests including, but not limited to, those that arise from the following:
 - a. The 1995 Waikato Raupatu Lands Settlement (and the Waikato Raupatu Settlement Act 1995), the 2008 Settlement and Settlement Act;
 - b. Tikanga and customary law
 - c. Common law (including the common law relating to aboriginal title and customary law); and
 - d. The Treaty of Waitangi and its principles.
12. Waikato-Tainui seeks to ensure that these rights and interests are recognized and protected with any policy development.
13. As part of the River Settlement signing in 2008, we also signed the Kiingitanga Accord. A cornerstone of the settlement is that both Waikato-Tainui and the Crown have committed to enter into a new era of co-management.
14. The intention of the settlement was that the Crown would respect and work with Waikato-Tainui in good faith, as a Treaty partner. As set out in the Kiingitanga Accord, this requires the Crown to engage with Waikato-Tainui at an early stage when developing any legislation or policies, or making any decisions, affecting the Waikato River, its waters or management over its waters.
15. Given the significant wider legislative reforms underway, it is critical that open and transparent dialogue is maintained between the Crown and Waikato-Tainui.

WAIKATO TAINUI RESPONSE TO SUBMISSION TEMPLATE FOR THE ECONOMIC REGULATION AND CONSUMER PROTECTION FOR THREE WATERS SERVICES IN NZ.

Economic regulation

1

What are your views on whether there is a case for the economic regulation of three waters infrastructure in New Zealand?

Waikato-Tainui considers there is a case for economic regulation of the three waters infrastructure. As noted in the discussion paper, there are a range of problems that can be attributed to the natural monopoly characteristics inherent in the water services sector. Such problems are aggravated by the fact that, as a result of the proposed Three Waters Reforms, the four Water Service Entities (**WSEs**) will not be constrained by the same pressures that currently apply to local councils (i.e., ratepayer discipline).

There is a real risk that without economic regulation the WSEs will become less responsive to the needs of consumers, iwi, hapuu and the wider community and will have untrammelled / unconstrained ability to raise prices charged to consumers and lower the quality of water services.

Accordingly, Waikato-Tainui considers that properly designed economic regulation is necessarily required to mitigate the risks of consumers being exposed to price shocks and will be pivotal for the Government to achieve its objectives for the Three Water Reforms (i.e., to improve the affordability and quality of waters).

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?*

Waikato-Tainui considers that stormwater networks should be subject to economic regulation alongside drinking water and wastewater for overall regulatory coherence and comprehensive improvement across the entire three waters sector.

3 *What are your views on whether the four statutory Water Services Entities should be economically regulated?*

Waikato-Tainui supports economic regulation of the WSEs for the same reasons set out at Question 1 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.*

The application of economic regulation should be restricted to the new WSEs only and should not apply to community schemes, private schemes, or self-suppliers. The rationale for the regulation of the WSEs does not apply to the creation and operation of alternative initiatives. These alternatives should be encouraged to the extent that they have the potential to offer more efficient schemes or have enhanced environmental or social outcomes that ultimately benefit smaller communities (such as a marae).

Broadening the scope of economic regulation to encompass smaller private schemes would disincentivise innovation into alternative initiatives, add significantly to overall compliance costs and (relatedly) reduce the overall efficacy of the regulatory regime.

5 *What are your views on whether the Water Services Entities should be subject to information disclosure regulation?*

Waikato-Tainui agrees with the discussion paper that information disclosure should apply as a *minimum* requirement but submits that it is unlikely to be sufficient as the sole mechanism of regulation. The strong natural monopoly characteristics and the removal of ratepayer discipline as a check and balance, calls for a more robust framework whereby information disclosure requirements are used alongside price-quality regulation.

6 *What are your views on whether Water Services Entities should be subject to price-quality regulation in addition to information disclosure regulation?*

As foreshadowed above, the WSEs should be subject to price-quality regulation in addition to information disclosure regulation. Waikato-Tainui consider that price-quality regulation is imperative for the Government to achieve its key objectives underpinning the proposed Three Waters Reforms (i.e., to ensure affordable, high-quality water services for the public of New Zealand).

7 *What are your views on the appropriateness of applying individual price-quality regulation to the Water Services Entities?*

At this stage, Waikato-Tainui does not have a strong view on the appropriateness of individual price-quality regulation of each of the WSEs. For regulatory coherence, the preference would be for a single price-quality framework to apply to all four WSEs equally. However, if there are characteristics of a particular WSE that are better suited to individual price-quality regulation and thus require more tailored scrutiny, then Waikato-Tainui does not have a principled objections to this.

- 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?*
- 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?*

A) It is submitted that a transitional price-quality path is required from 1 July 2024 (once the WSEs have been established and are scheduled to begin operating) to ensure that the price and quality of the WSEs are adequately controlled between 2024 and 2027. The graduated approach proposed in the discussion paper would effectively leave price and quality of services delivered by WSEs inadequately controlled until 2027, in turn, leaving consumers exposed over that period.

Furthermore, the discussion paper rightly notes that waiting until 2026 or 2027 could result in consumers foregoing two to three years of potential efficiency gains.

For the reasons noted above, Waikato-Tainui considers that a transitional price-quality path is necessarily required to (a) mitigate the risks that consumers are exposed to price shocks and declining quality, and (b) limit any delay to the expected achievement of efficiency gains that can be passed on to consumers.

B) We believe a transitional price-quality path should be developed and implemented by the Government via a Government Policy Statement (**GPS**). The absence of a profit incentive and the need to take into account a range of other policy objectives (which mean there are nuances for the economic regulator to understand, which takes time) suggests to us that, at least initially, the Government is best placed to impose a transitional price path.

- 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?*
- B) *What factors do you consider the economic regulator should include in their advice to the Minister?*

A) Yes, we believe the Minister of Commerce and Consumer Affairs should be able to reduce or extend the application of regulation on advice from the economic regulator. This would provide appropriate flexibility in relation to the application of regulation, provided the appropriate framework was in place to govern that process.

B) A key concern for Waikato-Tainui is the impact of the three waters reforms on vulnerable consumers. Although Waikato-Tainui considers that the general factors listed in other economic regimes, such as section 52I of the Commerce Act 1986, should all be taken into account by the economic regulator when making its inquiry, we also consider that the economic regulator should be expressly required to take into account the effects of the regulation on vulnerable consumers. We appreciate that section 52I(5) contains a 'catch-all' provision which provides that "during an inquiry, the [economic regulator] may have regard to any other matters it considers necessary or desirable for the purpose of the inquiry", and that this may of course include the impact on vulnerable consumers. However, we consider that the economic regulator should be expressly required to consider the impact of any proposed regulation on vulnerable consumers and that this ought to be included in the regulator's advice to the Minister (alongside the other more general factors listed in section 52I).

- 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?*
- 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?*
- C) *Are there any other considerations you believe should be included in the purpose statement, or as secondary statutory objectives?*
- 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?*

- A) Waikato-Tainui agrees that that a clear statement of the objectives of an economic regulation regime are imperative to the operation of the regime and are essential for the interpretation and implementation of the legislation. Waikato-Tainui acknowledges that the long-term interest of consumers is fundamental, but submits that this should also be subject to a requirement that any economic regulation should also be consistent with Te Mana o Te Awa (as it relates to the Waikato River), to the extent that Te Mana o te Awa applies to the functions and duties of the economic regulator.

Unlike telecommunications infrastructure, airports etc., the purpose statement for the economic regulation of water systems in New Zealand should appropriately reflect the cultural significance of water to Waikato-Tainui within the catchment area of the relevant WSE.

As will be discussed in further detail below, Waikato-Tainui submits that the statutory objectives for any economic regulation applying to the WSEs (or to any other aspects of the water services infrastructure more broadly) should deviate from the existing purpose statements in the Telecommunications Act and Part 4 of the Commerce Act to the extent necessary to ensure that implementation and interpretation of economic regulation is not inconsistent with Te Mana o Te Awa. Waikato-Tainui considers that providing all parties (including the economic regulator) with a common set of objectives will promote regulatory coherence within the three waters system.

- B) Waikato-Tainui expects this will need to be amended, but has no specific comment on the manner in which that occurs.
- C) The Government's own objectives for the Three Waters reforms include giving effect to Te Mana o te Wai. In order to ensure this objective is achieved, Waikato-Tainui considers it is imperative that the economic regulator has a statutory objective to give effect to Te Mana o te Awa (as it relates to the Waikato River), to the extent that Te Mana o te Awa applies to the functions and duties of the economic regulator. Otherwise there will be a disconnect between the statutory objectives of the economic regulator, and the statutory objectives of the Water Services Entities,¹ Taumata Arowai,² and those exercising or

¹ Cabinet has agreed a statutory objective for the Water Service Entities relating to 'giving effect to Te Mana o te Wai' (14 June 2021, CAB-21-MIN-0226 Minute: A New System For Three Waters Service Delivery: Paper One, Cabinet Office; para 15.4).

² Section 10 of the Taumata Arowai – the Water Services Regulator Act 2020.

performing a function, power, or duty under the Water Services Act.³ These entities are either already, or proposed to be, legally required to give effect to Te Mana o te Wai.

Waikato-Tainui appreciates that the Water Service Entities, regional councils, and Taumata Arowai will largely be best placed to advance Te Mana o te Awa (as raised in the discussion paper). However, if the disconnect in statutory objectives is not addressed then it could result in the economic regulator making decisions solely based on cost and economic efficiency considerations to the detriment of the Water Service Entities' broader remit, including in relation to Te Mana o te Awa. Waikato-Tainui does not want the economic regulator to be able to overturn or undermine decisions made by the Water Services Entities that support the restoration and protection of the health and wellbeing of the Waikato River for future generations.⁴

Waikato-Tainui does not agree with the statement in the discussion paper that issues such as Te Mana o te Wai are already effectively included in the economic regulator's mandate because these are issues of significant interest to consumers and would therefore fall within the purpose statement. There needs to be an explicit statutory objective for the economic regulator to give effect to Te Mana o te Awa (as it relates to the Waikato River), to the extent that Te Mana o te Awa applies to the functions and duties of the economic regulator. This is necessary to promote regulatory coherence and ensure this objective is meaningfully advanced by all relevant regulatory authorities.

Case study – Watercare's application to take water from the Waikato River

The concern about decisions being made solely based on cost considerations is not an abstract or theoretical concern. For example, Watercare has applied for resource consent to take an additional 150,000 cubic metres/day of water from the Waikato River as it will provide an "efficient and cost-effective supply of municipal water for Auckland".⁵ Waikato-Tainui considers Watercare's application undermines the very intent of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (the River Settlement Act) and the Iwi's goals in achieving Te Mana o te Awa and Mana Whakahaere. Watercare has other options that do not involve taking water from the Waikato River, but these are not as "cost-effective" and therefore were not progressed.

Reason Waikato-Tainui seeks reference to Te Mana o te Awa and not Te Mana o te Wai

As noted above, the Government proposes a statutory objective for the Water Services Entities to "give effect to Te Mana o te Wai." The River Settlement Act and the Kiingitanga Accord recognise Te Mana o te Awa, which is at the heart of the relationship between Waikato-Tainui and our ancestral river.

In a presentation from the Department of Internal Affairs to Waikato-Tainui it was identified that the proposed Te Mana o te Wai Statement "would be prescribed by Waikato-Tainui and other iwi whose rohe lie within the area of the Waikato-centred entity and could reflect Te Mana o te Awa." The issue with this approach is they are two different concepts, with Te Mana o te Awa being a broader concept than Te Mana o te Wai. This means the Water Service Entities (and by extension the economic regulator) could argue they are not legally required to give effect to Te Mana o te Awa. Therefore, Waikato-Tainui seeks an express requirement in the legislation for Water Service Entities

³ Section 14 of the Water Services Act 2021 which provides when exercising or performing a function, power, or duty under the Act, a person must give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to the function, power, or duty.

⁴ This is the overarching purpose of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

⁵ Watercare Services Limited, Proposed Waikato River Take Assessment of Environmental Effects, 11 December 2020, page 8.

B and A to “give effect to Te Mana o te Awa”, and the related statement would be a “Te Mana o te Awa Statement” in the context of the Waikato River (instead of Te Mana o te Wai).

- D) Waikato-Tainui considers the economic regulator should have an obligation to give effect to the principles and articles of Te Tiriti o Waitangi. As noted in the discussion paper, existing Te Tiriti settlements may warrant higher levels of investment activity. This unquestionably applies to the Waikato River Settlement. Section 5 of the River Settlement Act states that Te Ture Whaimana/ the Vision and Strategy for the Waikato River is intended by Parliament to be the primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River. It is critical that the economic regulator upholds the River Settlement, and does not inadvertently undermine its purpose. One option to achieve this is the economic regulator being enabled to obtain or commission third party expert advice if it does not have internal capability and competency in cultural matters.

Waikato-Tainui supports the regime being designed in a way that contributes to equitable outcomes and mitigates unintended impacts on Maaori. A key concern for Waikato-Tainui is the impact of the three waters reforms on vulnerable consumers. Waikato-Tainui agrees with the issues identified in the discussion paper that Maaori have experienced both price and service quality inequity, and been over-represented in groups with fixed income being more vulnerable to price shocks.

Water Service Entities should not, for example, be precluded by the economic regulator from having tariffs for different classes of consumers (e.g. vulnerable consumers) if, as a result of their own deliberations, they determine that such tariffs were warranted. Put another way, while Waikato-Tainui believes the economic regulator has an important role to play in terms of ensuring that, overall, the WSE’s act efficiently and recover adequate revenue to maintain the assets over the long term, the economic regulator should not ‘second guess’ a WSE’s decisions as to the charges applied to *particular* consumers, provided that, in aggregate, the revenue the WSE generates is appropriate.

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?

Waikato-Tainui agrees with the discussion paper that Part 4 of the Commerce Act is not the appropriate regulatory vehicle having regard to the following factors.

- The WSEs will be unique entities that will not be subject to the usual market forces, do not have a profit motive, and are not able to pay distributions or dividends to owners.
- The Government’s strong focus on affordability will require a more targeted and enhanced efficiency mandate for each of the regulated entities.
- As discussed above, it is imperative that the statutory objectives of the three waters economic regulation regime gives effect to Te Mana o te Awa (as it relates to the Waikato River) and does not allow the economic regulator to be able to overturn or undermine decisions made by the WSEs that support the restoration and protection of the health and wellbeing of the Waikato River for future generations.

Given the unique characteristics of the proposed WSEs, Waikato-Tainui considers that a sector-specific economic regime would be a more appropriate vehicle for the Government to achieve its Three Waters Reform objectives.

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?

A regulatory period of five years strikes us as sensible in order to balance the desire for regulatory certainty with the flexibility to periodically refresh price-quality paths to reflect the changing nature of consumer demands and changes in the external environment.

13

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?

B) What are your views on whether the economic regulator should be able to minimise price shocks to consumers and suppliers?

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?

A) Waikato-Tainui considers that the economic regulator should be obligated 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 the economic regulation regime. The input methodology regime is a well-understood regime that has been used in other regulated industries for some time. Furthermore, input methodologies impose discipline on regulated suppliers and are generally considered to be a robust mechanism which provides clarity and certainty to a broad range of stakeholders.

B) Waikato-Tainui strongly supports the economic regulator having the ability to calculate a maximum allowable revenue path with the objective of minimising price shocks to consumers and suppliers. In particular, Waikato-Tainui supports the regime being designed in a way that mitigates unintended price shocks to Maaori and other vulnerable communities. As discussed above, Maaori have been over-represented in groups with fixed incomes, being more vulnerable to price shocks.

C) While Waikato-Tainui appreciates that efficiency is important to achieve the Government's objectives for the Three Water Reforms, our central concern is that the WSEs will be incentivised (or mandated) to strive only for traditional economic efficiency gains to the detriment of the WSEs' broader remit, including in relation to Te Mana o te Awa or Tiriti o Waitangi principles.

However, Waikato-Tainui is comfortable with an 'active' efficiency approach provided that the purpose statement is consistent with the broader statutory objectives (discussed above) and does not, for example, allow the economic regulator to be able to overturn or undermine decisions made by the WSEs that support the restoration and protection of the health and wellbeing of the Waikato River for future generations.

Furthermore, the proposed "strong efficiency challenge" should not allow the economic regulator to 'second guess' a WSE's decisions as to the charges applied to particular consumers, provided that, in aggregate, the revenue the WSE generates is appropriate. By way of example, where a WSE has, as a result of their own deliberations, determined that reduced tariffs for particularly vulnerable consumer groups (e.g., certain groups of iwi, hapuu, or other Maaori consumers) is appropriate / warranted, then the economic regulator should not be able to undermine this decision on the basis of a theoretical e.g. pure total welfare, efficiency standard-.

- 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?*
- 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?*
- 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?*

- A) Waikato-Tainui believes the overall revenue the WSE's should be able to collect should be no more than that which allows them to properly maintain the assets over the long term.
- B) Waikato-Tainui favours option a) above and considers that each of the WSEs should be permitted to determine their own pricing structure following appropriate engagement with their governance group, communities, and consumers. It is submitted that the economic regulator should set the maximum allowable revenue / absolute returns, but the manner in which returns are achieved is more adequately dealt with by the WSEs. As set out in the discussion paper, this approach might be better described as a "hybrid" option of regulating certain aspects of pricing but leaving other aspects to the WSEs to determine.
- As discussed above, a key concern for Waikato-Tainui is the impact of the three waters reforms on our most vulnerable communities. Waikato-Tainui supports the regime being designed in a way that recognises:
- a. that Maaori communities are over-represented in vulnerable populations in New Zealand; and
 - b. the Maaori historic experience of both price and service quality inequity.
- Accordingly, Waikato-Tainui considers that the economic regulation regime should be designed in a way that gives due consideration to the rights and interests of Maaori as consumers of water services, contributes to equitable outcomes for Maaori, and mitigates unintended impacts on Maaori.
- On this basis, Waikato-Tainui submits that the economic regulator should be permitted to approve WSEs' pricing decisions that are specifically designed to protect vulnerable consumers. For example, the economic regulator should be able to approve a WSE's decision to impose reduced tariffs for particularly vulnerable consumer groups (e.g., certain iwi, hapuu, Maaori landowners, urban Maaori consumers, and / or rural Maaori consumers), provided that, in aggregate, the revenue the WSE generates is appropriate.
- C) Waikato-Tainui favours option a) above. As far as the revenue 'side' is concerned, the economic regulator's role should be limited to regulation of the maximum allowable returns of the WSE's and not pricing or components of pricing.

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?

Waikato-Tainui considers that a merits-based appeal process (i.e., allowing the substance and reasoning of the economic regulator's decisions to be challenged) is an appropriate accountability mechanism for entities supplying something as fundamental as water. As noted in the discussion paper, appeal rights promote high quality decision making by the regulator, something that is particularly important for three waters infrastructure.

Do you broadly agree that with the compliance and enforcement tools? Are any additional tools required?

The suggested tools appear reasonable to Waikato-Tainui.

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.

Waikato-Tainui is comfortable with a decision to elect the Commerce Commission as the most suitable regulator for the three waters sector, provided that:

- (a) the legislative purpose statement allows the economic regulator to have regard to Te Mana o te Awa principles (thereby maintaining consistency with the broader statutory objectives of the Three Waters Reforms);
- (b) the economic regulation properly enables the Commerce Commission to obtain or commission third party expert advice to assist it with the interpretation of those principles just as it would retain economic experts; and
- (c) the economic regulation allows the Commerce Commission to approve a WSE's pricing decision that is specifically designed to protect vulnerable communities (e.g., certain iwi, hapuu, Maaori landowners, urban Maaori consumers, and / or rural Maaori consumers).

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?

Waikato-Tainui has no firm view, but given that the four WSEs are nation-wide and because the economic regulation regime is intended to derive significant public benefits, funding from general taxation seems to be a more appropriate tool in this case.

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?*

Not applicable given our response to question 18.

Are there any other levy design features that should be considered?

Not applicable given our response to question 18.

Consumer protection

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?

A) Waikato-Tainui supports additional consumer protections.

B) Waikato-Tainui believe a bespoke purpose statement is appropriate, and we are generally comfortable with the objectives outlined in the discussion paper. However, in addition to the objectives outlined in the discussion paper, Waikato-Tainui considers that the purpose statement should expressly include the protection of vulnerable communities (including, in particular, Maaori communities) as an objective, as well as recognising:

- a. that Maaori communities are over-represented in vulnerable populations in New Zealand; and
- b. the Maaori historic experience of both price and service quality inequity (as expressly mentioned in the discussion paper at paragraphs 100 and 107).

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?

Waikato-Tainui supports such an approach, which is aimed at addressing any potential consumer protection 'gaps' in the three waters regulatory framework. In particular, Waikato-Tainui supports the regime being designed in a way that contributes to equitable price and service level outcomes and mitigates unintended impacts on Maaori.

What are your views on whether the consumer protection regulator should also be empowered to issue guidance alongside a code?

Waikato-Tainui agrees there is value in the consumer protection regulator being empowered to issue guidance alongside a code.

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?

Waikato-Tainui does not feel particularly strongly in relation to the mechanics chosen, but intuitively it feels appropriate to combine them.

What are your views on whether minimum service level requirements should be able to vary across different types of consumers?

Waikato-Tainui strongly supports (for the reasons outlined in the discussion paper) the flexibility for minimum service levels requirements to vary across different types of consumers.

As discussed above, the rights and interests of Maaori as consumers of water services should appropriately be considered against the background that:

- a. that Maaori communities are over-represented in vulnerable populations in New Zealand; and
- b. the Maaori historic experience of both price and service quality inequity.

In order to achieve equitable outcomes for vulnerable communities and to adequately reflect historic inequity and the specific interests of Maaori, Waikato-Tainui considers that the consumer protection regime should be designed to allow for minimum service level requirements to vary across different types of consumers.

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?

As discussed above, a key concern of Waikato-Tainui is the impact of the three waters reforms on vulnerable consumers. Waikato-Tainui agrees with the issues identified in the discussion paper that Maaori have experienced both price and service quality inequity, and have been over-represented in groups with fixed income being more vulnerable to price shocks.

Waikato-Tainui agrees that the regulatory regime should include a positive obligation to protect vulnerable consumers (including, in particular, Maaori consumers that may be especially vulnerable due to historic inequity, low household income, employment levels and various other factors), and that this should be addressed via minimum service level requirements which may vary across different types of consumers.

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?

Waikato-Tainui considers the consumer protection regulator should have an obligation to give effect to the principles and articles of Te Tiriti o Waitangi.

Waikato-Tainui considers it is important an expert body to advocate on behalf of consumers is established, and this body should be mandated to have a particular focus on addressing the interests of Maaori and vulnerable consumers and communities.

- 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?*
- B) *Do you support any other options to manage the regulatory impost on community and private schemes?*

- A) Waikato-Tainui strongly believes that the regime should apply only to the WSE's. Any initiatives by community or private schemes should be actively encouraged, and care should be taken to ensure that regulatory compliance costs do not undermine the ability of such schemes to 'get off the ground'.
- B) Waikato-Tainui considers that a 500 customer (household) limit is an appropriate threshold.

Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?

Waikato-Tainui believes the proposed tools strike an appropriate balance.

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?

Waikato-Tainui agrees with the preliminary views outlined in the discussion paper, that the Commerce Commission is the most suitable body to be the consumer protection regulator, provided that:

- (a) the consumer protection regulator should have a positive obligation to give effect to the principles and articles of Te Tiriti o Waitangi and a legislative purpose that allows the consumer protection regulator to have particular regard for outcomes aimed at addressing the interests of Maaori, vulnerable consumers and communities;
- (b) the consumer protection regulator should also have a positive obligation to protect vulnerable consumers (including, in particular, Maaori consumers that may be especially vulnerable due to historic inequity, low household income, employment levels and various other factors); and
- (c) the consumer protection regulation properly enables the Commerce Commission to obtain or commission third party expert advice to assist it with the interpretation of the principles and articles of Te Tiriti o Waitangi.

What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?

Waikato-Tainui considers that consumer engagement incentives are fundamental to strengthen the voice of vulnerable consumers and communities in the three waters system and to adequately absorb and incorporate high-quality consumer feedback into WSE's strategic priorities.

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?

Waikato-Tainui agrees such a body should be established.

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?

Waikato-Tainui believes an extension to the CAC's scope is preferable. As noted in the discussion paper, there is clear scope for the CAC to broaden its remit to other sectors (such as the water sector).

What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?

Waikato-Tainui agrees a dedicated disputes resolution scheme is required. We do not feel strongly as to who that provider should be.

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?

Waikato-Tainui agrees that the general categories of disputes listed at 228 of the discussion paper seem sensible. However, careful consideration should be taken to retain a degree of flexibility over the kinds of disputes that may fall within the remit of the disputes resolution scheme. For example, an overly prescriptive categorisation has the potential to preclude certain disputes that should, appropriately, be adjudicated and resolved through the disputes resolutions scheme.

What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?

Waikato-Tainui submits that a mandatory statutory consumer disputes resolution scheme is most appropriate for the water sector. In particular, a mandatory scheme should provide greater incentives for the WSEs to improve consumer outcomes over time and will mitigate the risks of leaving vulnerable consumers without adequate dispute resolution mechanisms and proper recourse.

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?

Waikato-Tainui sees value in a new mandatory resolution scheme dedicated to the waters sector, but as noted above, we do not strongly as to who that provider should be.

Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?

Yes, such incentives appear sensible.

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?

Waikato-Tainui strongly agrees that there is a need for special consideration to be given to ensuring accessibility for vulnerable consumers to the water sector dispute resolution scheme.

We agree with the points raised in the discussion paper, in particular, that:

- (a) under-served communities often face special difficulties accessing dispute resolution schemes (and generally have a lower awareness of available dispute mechanisms), meaning vulnerable consumers can be less able or likely to assert their rights and seek individual redress;
- (b) Maaori communities are over-represented in these vulnerable populations in New Zealand; and
- (c) it is important that both suppliers and the dispute resolution provider ensures that underserved and vulnerable communities are able to participate in processes that affect them including dispute resolution processes. This will require effective outreach to ensure these communities understand their rights and the options available to them.

Waikato-Tainui considers that the suggested approaches noted at paragraph 238 of the discussion paper seem sensible, but also recommend clarifying (and raising consumer awareness) that there is no charge for consumers seeking to raise disputes, as this will be a key consideration for many consumers, and ensuring that appropriate community outreach is implemented.

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?

Waikato-Tainui has no firm view, but given that the four WSEs are nation-wide and because the consumer protection regime is intended to derive significant public benefits for a large

number of consumers, funding from general taxation seems to be a more appropriate tool in this case.

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?*

Not applicable given our response to question 41.

Are there any other levy design features that should be considered?

Not applicable given our response to question 41.

Implementation and regulatory stewardship

14 *Do you consider that regulatory charters and a council of water regulators arrangements will provide effective system governance? Are there other initiatives or arrangements that you consider are required?*

As discussed throughout this submission, Waikato-Tainui considers that providing all parties (including the economic and consumer protection regulator) with a common set of objectives will promote regulatory coherence within the three waters system. This would be necessary to achieve the Government's own objectives for the Three Waters reforms. Accordingly, we consider that a 'regulatory charter' and a 'council of water regulators' will help to achieve a more coherent system of regulation for the waters sector.

15 *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?*

For general coherence within the three waters system, the preference would be for the Government to issue a GPS to provide high-level strategic direction to the WSEs to inform and guide the entities' decisions and actions in fulfilling their statutory purpose and objectives. While Waikato-Tainui appreciates the importance of statutory independence of the economic and consumer protection regulator(s), we believe there is benefit in the Government having the ability to transmit the GPS to the economic and consumer protection regulator(s), and in those regulators being required to "have regard" to it when fulfilling their statutory functions.

Waikato-Tainui considers that providing all parties (including the economic and consumer protection regulator(s)) with a common set of objectives will promote regulatory coherence within the three waters system.

16 *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?*

Waikato-Tainui agrees with the points raised in the discussion paper and considers that information sharing between the relevant regulatory agencies would be an effective way to encourage system cohesion and to advance the common objectives of the three waters regime.

CONCLUSION

16. Waikato-Tainui seeks to ensure that these rights and interests are recognized and protected with any policy development.
17. We recognise there are still significant areas of development and/or consideration to be made with regards to the economic regulator and consumer protection for three waters services in NZ. To this end, our response to this bill is based on the information provided to date and is subject to review and further commentary over the upcoming months.

DATED

20 December 2021

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