

# Submission

**ECONOMIC REGULATION AND CONSUMER  
PROTECTION FOR  
THREE WATERS SERVICES IN NEW ZEALAND  
December 2021**

# ECONOMIC REGULATION AND CONSUMER PROTECTION FOR THREE WATERS SERVICES IN NEW ZEALAND

**By:** Waipa District Council

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## INTRODUCTION

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Waipa District Council (our Council) welcomes the opportunity to provide comment on the Discussion paper - Economic Regulation and Consumer Protection for Three Waters Services in New Zealand (dated 27 October 2021) released by the Ministry of Business, Innovation and Employment.

Our Council has previously advised that the form of the current Water Reforms are not acceptable to Waipa District, and in providing this feedback does not retract that current position. However there are elements of the questions posed in the discussion document which our Council has determined it is appropriate to provide commentary on.

Overall, our Council supports the role an Economic Regulator provides in New Zealand to ensure that services are provided to consumers, where the cost of the service is appropriately balanced against the quality of that service. It is a role that our Council has served in managing the delivery of its three water services where these services have been optimised against our strategic outcomes and wellbeing objectives, and the communities' willingness to pay for these.

Waipa DC notes that activity management planning is fundamental to delivering services to our communities, ensuring that service consumers are a part of developing appropriate levels of service they receive, and balancing this with their willingness to fund the costs associated with these. Derived from this are the performance measures which then inform consumers on how the service is being delivered relative to their expectations and agreed objectives. Therefore this framework (International Infrastructure Management Manual – IIMM or ISO 55001 which sets out the requirements for an asset management system) is seen as integral to informing what an Economic Regulator should have oversight of supporting consumers and governors to have confidence in the Water Services Entities.

## PART 1: ECONOMIC REGULATION

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

*Our Council supports the formation of an Economic Regulator for three waters infrastructure where this ensures value for consumers and confidence that the delivery of services appropriately balances the levels of service that the community requires with the cost of delivery.*

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?

*Stormwater networks are often areas of shared responsibility between council activities such as Transport, Three Waters and Community Reserves. In the future, with the separation of these activities, it is considered both appropriate and essential that an Economic Regulator has oversight of the delivery of services by the Three Waters Entities such that there is complete transparency on where costs fall for consumers and the wider community.*

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

*Our Council believes that only the four statutory Water Services Entities should be economically regulated. It is agreed that an Economic Regulator would ensure that efficiency gains are met by the Entities which is the primary benefit from their formation, thereby reducing cost to consumers in the longer term. However as is noted below the definition of efficiency gains needs careful consideration; reduced cost to the consumer at the risk of longer term service sustainability cannot be allowed even though this may appear as a short-term efficiency gain.*

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.

*As noted above, Our Council believes that only the four statutory Water Services Entities should be economically regulated as it is believed that the costs of regulating other private water suppliers would outweigh the benefits to consumers.*

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

*Information disclosure regulation is considered appropriate for some areas of delivery of three waters services. It will provide an incentive for the Water Services Entities to improve performance, and enable the regulator (and potentially customers) to hold them accountable. However as is provided for in the discussion document, this will not be appropriate for all areas of delivery.*

*We note Councils are subject to information disclosure through audit processes under the Local Government Act (2002) and requirements under the Local Government Official Information and Meetings Act (1987). This provides a mechanism to ensure performance standards are met, and we would expect any new water management system to maintain similar checks and balances at a minimum. We acknowledge that any cross over of functions with Taumata Arowai would need to be worked through in this space. Equally the regime needs to be cost effective with a key focus on the consumer/customers receiving the service and not duplicate other reporting or regulatory requirements.*

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

*As noted above the areas outlined in the Discussion Document (page 29) there are valid reasons for price-quality regulation for the Waters Services Entities. Whilst it is widely expected that the Governance arrangements for each Entity will also have a high level of scrutiny of the Entity, a national perspective is appropriate. A Government Policy Statement may achieve this in part, but an Economic Regulator would be expected to further strengthen this. Our Council supports the statement "In particular, price-quality regulation often plays a crucial role in driving economic efficiency within regulated suppliers to ensure that water services are as affordable as possible for consumers." Activity management frameworks are integral to aligning the delivery of services to consumer needs, wants, and willingness to pay. The regulatory framework should be strongly aligned to the activity management framework.*

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

*Our Council supports the view that that individual price-quality regulation is the most appropriate form of price-quality regulation, rather than default or generic regulatory requirements, as there will be only four Waters Entities covered.*

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?

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 (GPS)?

*It is noted in the Discussion document that a transitional price quality path by the Economic Regulator “would have the benefit of the transitional price-quality path being set independent of Government to avoid any perception of political interference, but would **impose a significant burden** on the economic regulator which could undermine its ability to effectively develop a full cost-based price quality path.” As such Our Council would prefer option B where the transition to full cost based price quality regulation is via a Government Policy Statement until 2027 or as appropriate. However it is anticipated that the GPS will not set prices nationally, as this would not be appropriate when the Entity is better placed in balancing delivery across the pan-regional areas.*

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?

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

*As Our Council believes only the four Water Services Entities should be regulated, it is not considered appropriate that the Regulator would provide advice beyond these Entities.*

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?

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?

*Our Council supports the statement "that the purpose statement for any economic regulation regime that applies to the water sector should be as close as possible to the purpose statements contained in the Telecommunications Act 2001 and Part 4 of the Commerce Act given their interpretation has been thoroughly tested through numerous judicial and merits review processes. These regulatory regimes are also well understood by capital markets, ratings agencies and other interested stakeholders." However it is noted that all reference to the extraction of profits needs to be removed, as only Water Services Entities should be subjected to the regulation.*

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

*We note that there is a correlation between the level of economic activity and greenhouse gas emissions. Given this, we think it may be worth considering whether climate change is factored into the design of an economic regulatory regime, as it may help achieve alignment between various central government goals and 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?

*Our Council supports that the Treaty of Waitangi principles should be factored into the regulatory regime, however it is clear and that the regulator will need an understanding of Te Tiriri and te Ao Māori and the implications for, and application to, three waters services. Our Council also supports that the regime be designed in a way that contributes to equitable outcomes and mitigates unintended impacts on Māori. It is expected that the Economic Regulator would recognise the significance of water as taonga for all.*

*All water services entities are expected to develop customer charters which will need to be based on a culturally sensitive, respectful basis that incorporates a requirement for equitable access to all services.*

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?

*It is agreed that a sector-specific regime would be a more appropriate vehicle for the Government to achieve its Three Waters Reform objectives given the unique characteristics of the proposed Water Services Entities.*

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?

*Our Council does not have a view on this matter. However given the likely transition to regulation, it is agreed that this is appropriate in the determination of the regulatory period.*

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?

*Our Council agrees that it is appropriate that the regulator 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. Whilst it is acknowledged that this will be a cost to the regulator, and therefore also to the consumer, this is a requirement that will need to be met by either the Water Services Entity or the Regulator and on balance it would be most efficient if undertaken by the Regulator.*

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

*Our Council does not believe it is appropriate for the Economic Regulator to influence impacts from price shocks. Whilst it is agreed that the Regulator would need to establish the maximum allowable revenue path, and how this is charged to consumers, it needs to be managed by the Water Services Entity in line with the Statement of Expectations from the Governing Body.*

- 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?



*It is considered appropriate that the Regulator does actively drive efficiency gains as much as possible within the regulatory framework, however noting the comment above around defining efficiency appropriately.*

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?

*Our Council supports the hybrid approach of regulating certain aspects of pricing, but leaving other aspects to the economic regulator or the water services entity (within the maximum allowable revenue set by the economic regulator). Again it is considered appropriate that all aspects of the Local Government Act which “regulate” the delivery of water services is used to inform the proposed economic regulatory framework (financial sustainability, efficiency, transparency, etc).*

- B) Who do you consider should have primary responsibility for determining the structure of three waters prices?

*Our Council believes that The Water Services Entity, following engagement with their governance group, communities, and consumers should have primary responsibility for determining the structure of three waters prices.*

- 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?

*It is believed that the Economic Regulator should be obliged to develop pricing structure methodologies to ensure these are consistent across the Water Services Entities, thereby reducing churn within the system.*

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?

*Our Council does not have a view on this aspect, however agrees in principle with the Discussion Document statement “Our preliminary view is therefore that merits review should be available on the input methodologies developed by the economic regulator, and determinations that implement individual price-quality regulation. However, we do not consider merits reviews should be available on the regulator’s determinations that implement procedural processes, such as information disclosure regulation.”*

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

*The potential compliance and enforcement tools noted in the Discussion Document (Table 4 page 47/48) are supported, and no further tools are suggested.*

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.

*Our Council supports the analysis undertaken, and the recommendation that the Commerce Commission is the most appropriate body to be the NZ three waters sector economic regulator. The formation of a new regulator is not warranted for the expected reach (ie only the four water services entities), and Taumata Arowai is needed to focus purely on waters outcomes.*

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?

*It is accepted that all costs for the Economic Regulator should be funded from levies to consumers as this is the most efficient method for cost recovery, and provides good transparency within the system.*

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?

*Our Council does not hold a view on this, other than whichever method is chosen should be the most efficient and transparent methodology possible.*

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

*No other design features are suggested for consideration.*

## PART 2: CONSUMER PROTECTION REGULATION

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21. A) What are your views on whether additional consumer protections are warranted for the three waters sector?

*Our Council believes that 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 bespoke purpose statement is appropriate for the three waters sector, and the proposed limbs in the Discussion Document are considered appropriate to ensure that consumers' needs and requirements are adequately provided for and protected. This will need to dovetail with the signalled consumer/customer charter.*

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?

*Our Council supports a mandated code, which has been developed with significant input from consumers, alongside Councils and Māori/Iwi and the Water Services Entity governing bodies.*

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

*The issuing of guidance alongside the code is seen as not only desirable, but almost essential to ensure the transparency needed for all interested parties. Such a guide could be presented as a Customer Charter; however it is considered more appropriate that each of the Water Services Entities develop their own Customer Charter which is fully aligned with the regulatory requirements.*

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?

*Our Council considers it appropriate to have provisions relating to water services quality in the same piece of economic regulation and consumer protection legislation as it is expected this will be easier for consumers to navigate and understand their rights and protection mechanisms.*

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

*On the basis that the service level requirements are **minimum**, it is expected that these should be consistent across all types of consumers. However there is agreement that having a positive obligation on the regulator to consider the interests of vulnerable consumers is appropriate. As such a minimum service level requirement will be for each Water Services Entity to incorporate a framework such as Vulnerable Consumer Guidelines would be supported.*

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?

*Refer comment 25 above.*

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?

*Our Council believes that all Te Tiriti o Waitangi principles should be factored into the regulatory regime, including consumer protection rights.*

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?

*Our Council believes that Consumer protection should only apply to Water Services Entities.*

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

*No, as Our Council believes that the regime should not apply to community or private schemes.*

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

*Our Council broadly agrees with the tools proposed (table 8 page 71); however the inclusion of financial penalties is a concern as it would be anticipated that these would be sheeted home to the consumer (as funder of the Water Services Entity). This is not considered appropriate. This type of enforcement is only appropriate where a profit imperative is in place.*

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?

*Our Council agrees with the view that the Commerce Commission is the most suitable body for consumer protection regulation, and that this should be delivered alongside all other activities of the Economic Regulator.*

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

*All Water Services Entities should have a primary focus of delivering high-quality services to communities, and this needs to be achieved through high-quality engagement. Our Council does not believe this needs to be incentivised.*

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?

*Our Council does not have a view on this area.*

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?

*Our Council does not have a view on this area.*

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

*Our Council supports the view is that a dedicated consumer dispute resolution scheme for the three waters sector is required.*

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?

*The listed disputes noted in the Discussion Document (page 81) are considered appropriate to be included in a dispute resolution scheme. No other issues are suggested to be included.*

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

*Our Council supports the option for mandatory provision of consumer dispute resolution.*

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?

*It is considered appropriate that an existing jurisdiction be used for dispute resolution as the establishment of any other new scheme would likely be expensive and of limited value if the coverage is only the four Water Services Entities.*

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?

*As noted above, Water Services Entities only.*

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

*This is considered essential for a responsive Water Services Entity to achieve good consumer relationships.*

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?

*Our Council does not have a view on this matter.*

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?

*As the protection provided is to consumers, a levy on the suppliers is appropriate.*

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?

*Our Council does not have a view on this matter; however the most efficient and effective methodology should be adopted as the cost of this will fall to consumers to fund.*

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

*Our Council has no further suggestions on the levy.*

### **PART 3: IMPLEMENTATION AND REGULATORY STEWARDSHIP**

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44. 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 Our Council believes that only the Water Services Entities should be regulated, it is considered that the Governance of the entity will be supported by a robust regulatory framework; however it is recognised that coordination between the Water Services Entity governance board, Taumata Arowai and the Economic Regulator will be essential. As such a Regulatory Charter may be appropriate to meet this requirement.*

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?

*Our Council supports this proposal where the GPS does transmit its policies to the economic and consumer protection regulator.*

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?

*Our Council agrees with the statement that “allowing the economic and consumer protection regulator to share information with other regulatory agencies is a core part of a modern and cohesive regulatory system.”*

#### **Other Comments**

*Our Council has no further comments on this matter.*





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