

# Submission on economic regulation and consumer protection for three waters services in New Zealand

## Your name and organisation

<b>Name</b>	Neil Holdom
<b>Organisation (if applicable)</b>	New Plymouth District Council

## Responses

Economic regulation	
1	<p><i>What are your views on whether there is a case for the economic regulation of three waters infrastructure in New Zealand?</i></p> <p>NPDC supports the case for economic regulation of the new Water Service Entities (WSE). NPDC agrees with the assertion that economic regulation provides benefits that protect the consumer’s long term interests.</p> <p>Driving efficiency of water service providers whilst redressing the historic underinvestment in three waters infrastructure is a critical consumer safeguard.</p> <p>However, NPDC notes that the Government needs to be mindful of the cost of compliance to ensure that it is kept proportional and does not unnecessarily increase costs to the consumer.</p>
2	<p><i>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?</i></p> <p>Whilst NPDC sees some benefits in economic regulation of stormwater assets, most notably as a safeguard against under investment, we also note the differences between stormwater networks compared to water and wastewater networks. These differences present challenges including:</p> <ul style="list-style-type: none"> <li>• Identifying who the customer of stormwater services are given there is no identifiable consumption of a product or commodity.</li> <li>• Identifying the balance of benefits to the individual consumers and that attributed to the general public good will make regulating pricing models more challenging.</li> <li>• Stormwater networks and services are provided by multiple agencies, are heavily integrated with road infrastructure as well being provided by private third parties. This makes regulating the service delivery agencies more complex that were there is a single regulated monopoly provider.</li> </ul> <p>Through the eight week feedback period the Department of Internal Affairs provided for Local Government to provide feedback on the proposed Three Waters Reforms; NPDC submitted that stormwater services should be excluded. As an alternative, stormwater services should be integrated into the roading function of councils. This would:</p>

- Remove the complexity associated with their separation;
- Recognise the contribution “green” storm water infrastructure can have in placemaking
- Provide opportunities for alternative funding through the Waka Kotahi (NZTA) financial subsidies provide to Local Authorities
- Provide a proxy for economic regulation via Waka Kotahi’s already established auditing of their investment programmes.

On balance, if stormwater services are transferred to WSE then NPDC would support the economic regulation bounding WSE-provided stormwater services. This will minimise a ‘poor cousin’ effect, such as stormwater being overly burdened with corporate overheads so as to minimise the operating costs on the regulated water services.

3

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

NPDC supports the economic regulation of drinking water and wastewater services delivered by the WSE.

NPDC is of the view that an economic regulator that serves as a consumer ombudsman/watchdog presents an opportunity to significantly simplify the proposed governance structure for these new water service delivery entities. A regulator focused on protecting consumer interests through price/quality pathways and lifting asset management maturity will be critical to achieving the desired outcomes of the reforms. Effective economic regulation is likely to address many of the risks being addressed with other elements of the model and we would advocate for simplification across the rest of the model to deliver more efficient outcomes and provide clarity for the entities.

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.*

NPDC is of the view that economic regulation should not apply to small scale community schemes, private schemes or self-suppliers. This is because the consumers of these water supply schemes will have sufficient influence over the strategic planning, investment priorities and the cost to deliver these services. Furthermore, given these schemes are typically characterised by their small scale, the compliance costs associated with economic regulation is likely to outweigh the benefits.

5

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

NPDC supports the use of information disclosure regulation. We agree with the assertion that where there are areas with natural monopolies, disclosure regimes play a critical role in informing consumers of the relative performance of the regulated suppliers. Benchmarking of disclosed information also provides important incentives for regulated suppliers to improve the relative performance. We note that the WSE will be public authorities and will likely have obligations under the Local Government Official Information and Meetings Act 1987 as well. The regulatory environment should be developed with an integrated digital architecture designed to improve information quality, efficiency and access.

6

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

NPDC supports price-quality regulation. We view it as an effective protection for consumers against overcharging in monopoly markets whilst driving a mature approach to asset management as a safeguard to underinvestment in asset maintenance and renewals when there is downward pressure on prices from consumers. This has been a particular issue for the local government sector when delivering water services as downward pressure from communities when councils set their rates has driven a systemic underinvestment in water infrastructure at the expense of quality.

NPDC also supports the use of price-quality regulation as a tool to ensure appropriate investment into giving effect to Mana Whenua aspirations for Te Mana O Te Wai. It is NPDC's view that using price-quality regulation to set minimum quality standards that are aligned to Te Mana O Te Wai principles will be an effective way to ensure that WSE financially plan for and deliver the necessary improvements. WSE that fail to do so will then be subject to regulatory enforcement tools. By comparison, the current reforms proposal for the governance of WSE includes Mana Whenua issuing Te Mana O Te Wai statements of expectation to the WSE boards. It is not clear how effective these will be. Nor is it clear what their status under legislation or regulation will be and what the consequence of failing to meet any obligations contained therein will be.

7

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

NPDC supports the use of individual price-quality regulation because the reforms are only proposing four WSE so individual regulation remains practicable. We also support individual regulation as this brings the benefit of being able to tailor targets for each individual supplier. This will be important when considering the differences the four new entities will have, such as:

- The urban verses rural nature of the communities they service
- The different challenges that will drive the prioritisation of investment decisions by the new entities.

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?*

NPDC supports a graduated implementation of economic regulation because:

- The new WSE will largely inherit asset management plans and capital investment programmes from local authorities that they have had no voicing in creating and little opportunity during the transition period up to 1 July 2024 to modify them.
- There will be significant gaps in the asset data handed over from some local authorities to the new WSE. This will undermine the ability to establish effective price quality pathways.

NPDC does not consider a transitional price-quality path necessary. The assertion that this will lead to forgoing early efficiency gains is based on the false assumption that economic regulation is the only driver of efficiency. Through the consolidation of more than 60 local authority water suppliers into four entities, there will be early efficiency gains through the

rationalisation of corporate overheads and management structures. NPDC also notes that the financial modelling undertaken by the Water Industry Commission for Scotland (WICS) included a material “invest to save” budget for the new entities which will contribute to early efficiency gains.

If a transitional price-pathway is implemented then NPDC’s view is that it should be implemented by an independent economic regulator and not by central government. An independent regulator is more likely to be effective at engaging with the water service providers and understanding the sector constraints as it would be part of their core focus as an entity compared to the very broad focus of Central Government. It also establishes early relationships to build trust between WSE and the regulator.

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?*

NPDC supports the ability of the regulator to recommend to the Minister of Commerce and Consumer Affairs the extension of regulation to other WSE beyond the four entities proposed under the Three Waters Reforms. Any such advice should be grounded in the balance of benefits to consumers against the additional cost of compliance. It may also be appropriate for Taumata Arowai to be able to make such a recommendation as well.

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?*
- 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?*

NPDC supports the use of a purpose statement that focuses on the long term interests of consumers aligned with the purpose set out in Part 4 of the Commerce Act.

So long as it does not interfere with the regulated provider from provisioning for risks, NPDC would support the modification of sub-clause (d) to something to the effect of:

**“are limited in their ability to intentionally seek to realise a profit”**

NPDC submits that an additional subpart be included to the effect (or similar) of:

**“have incentives to give effect to Te Mana o Te Wai”**

NPDC recommends that MBIE seeks guidance from mana whenua on the exact wording of this additional sub-clause. Consideration should also be given to its priority/importance compared to the other sub-clause, given Te Mana o Te Wai prioritises the needs of awa and other natural water sources above the interests of consumers.

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?*

NPDC agrees that the use of generic economic regulation under Part 4 of the Commerce Act is not the preferred option for the reasons stated in the discussion paper supporting this consultation process.

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?*

NPDC supports a 5 year regulatory period as a balanced approach between providing certainty and periodic refreshing of price quality pathways.

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?*

NPDC supports the up-front publication of input methodologies on the grounds that the benefits associated with the certainty provided to suppliers, their debt providers and rating agencies will outweigh the additional costs associated with creating the input methodologies up-front.

NPDC views minimising price shocks to consumers as an integral function of any economic regulator and we support including this as an obligation on the regulator.

NPDC supports the setting of efficiency targets, particularly in markets where there are monopoly service providers and an absence of competition and consumer choice to incentivise efficient service delivery.

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?*
- 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?*

NPDC submits that each WSE is best placed to determine the structure of three waters prices. Three water services (particularly water and wastewater) can be used to create incentives on consumer behaviour and the WSE are better placed to understand when and where such incentives are needed. For instance, NPDC is in the process of transitioning our community to water meters and volumetric charging to reduce pressure on awa and other water takes. Setting the right price for incentives is crucial, but may vary from scheme to scheme because the issues may differ (such as the percentage of water reduction being sought to remain within current abstraction consents).

NPDC would support the use of Government Policy Statements (GPS) to provide direction to WSE on pricing structures. These GPS could be used to address equity and hardship issues. The recent removal of the low electricity user plans shows the issues associated with regulators setting pricing methodology for lower users. This will particularly be the case if there are a wider variety of pricing methodologies used. As such, we recommend that these be principle-based direction setting rather than firm methods.

Section 101 of the Local Government Act 2002 sets out a range of factors that local authorities must consider when making funding decisions. NPDC recommends that WSE should have a similar set of mandatory considerations when setting the structure of three waters pricing. The considerations could be set by the economic regulator.

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?*

NPDC supports the preliminary view in the supporting discussion paper that merits reviews should be available on the input methodologies developed by the regulator and determinations that implement individual price-quality regulation.

16

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

NPDC broadly agrees with the compliance and enforcement tools included in Table 4 of the supporting discussion document.

However; NPDC is concerned that, because the four water supply entities are to be established on a not-for-profit basis, the efficacy of penalty fines as a deterrent will be weakened as the cost will inevitably be passed on to the consumer instead of from the profit margin of the entity. For this reason, we would generally recommend a stronger focus on other compliance tools rather than enforcement.

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.*

NPDC submits that a new independent water economic regulation authority would be the most suitable, whether as a separate organisation or as a separate regulator within the Commerce Commission.

Whilst we acknowledge that this won't be the cheapest option it is the one that is most likely to deliver the best outcomes for consumers.

	<p>NPDC notes that the criteria used in the assessment in the discussion document (Table 5) is heavily biased towards the short term implications associated with each option. For example, the time and effort that will be required to establish the regulator and how much expertise in three waters exists at the point of establishment. The assessment is silent on longer term outcomes, such as the depth of three water expertise that could potentially be developed over time as the regulator mature.</p> <p>NPDC notes that there is no compelling reason provided in the discussion document to justify the urgency to have the regulator established for day-one of the new WSE. In places, the discussion document is openly critical of how short term focused decision making by elected officials has undermined the existing three waters service delivery model. The assessment in Table 5 of the discussion document appears to be a case in point.</p> <p>NPDC submits that MBIE should reconsider its assessment criteria and refocus them on the long term implications and benefits that could be accrued over the next 30+ years.</p>
18	<p><i>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?</i></p> <p>NPDC supports funding the economic regulator using levies.</p>
19	<p><i>Do you think that the levy regime should:</i></p> <p>A) <i>Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR</i></p> <p>B) <i>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?</i></p> <p>NPDC supports a regulator led levy regime on the basis that it promotes efficiency in the regulator’s activities and it creates a direct connection between consumers and the regulator – consumers will ultimately fund any levy so there needs to be a recognition of value for money provided by the regulator.</p>
20	<p><i>Are there any other levy design features that should be considered?</i></p> <p>NPDC has no further feedback.</p>
<b>Consumer protection</b>	
21	<p>A) <i>What are your views on whether additional consumer protections are warranted for the three waters sector?</i></p> <p>B) <i>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?</i></p>
	<p>NPDC supports the use of a bespoke purpose statement with additional consumer protections for the reasons outlined in the discussion document.</p> <p>The consumer protection function potentially enables the simplification of the governance arrangements for the WSE. A consumer protection function can act as the ‘voice for the consumer’ and thereby remove the need for local representation in the governance</p>

	<p>structure and for the 'strategic and performance expectations' document. This reduction in governance complexity will also help to reduce costs to consumers.</p> <p>NPDC recommends clear delineation between the economic regulator and Taumata Arowai. Council is concerned that some elements of economic regulation could overlap with regulations by Taumata Arowai. For instance, the discussion document notes that minimum flow or pressure rates could be subject to the consumer protection functions, however this is closely related to the requirements of section 25 of the Water Services Act 2021 to provide a sufficient quantity of water (as flow and pressure impact on the quantity of water available). NPDC recommends that the legislation for economic and consumer protection regulation clearly specify that it is not to overlap with water safety and environmental regulation.</p>
22	<p><i>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?</i></p> <p>NPDC supports the use of minimum service levels requirements via a mandated code. Several of the examples provide in the discussion document align to some of the existing mandatory performance measures imposed on local authorities by the Department of Internal Affairs. We do note that the DIA performance measures are, however, lacking in specificity and subject to considerable interpretation. The minimum service level requirements should be constructed to avoid potential for mis-incentivising behaviour, such as focusing on only one or two aspects of performance.</p>
23	<p><i>What are your views on whether the consumer protection regulator should also be empowered to issue guidance alongside a code?</i></p> <p>NPDC supports the regulator being able to issue guidance alongside codes.</p>
24	<p><i>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?</i></p> <p>NPDC does not have a particular view on if it is preferable to include consumer protection in existing legislation or in new bespoke legislation dedicated to the three waters services. A guiding principle in deciding should be ensuring a fit for purpose outcome that is accessible and easily understood by the consumers being protected.</p>
25	<p><i>What are your views on whether minimum service level requirements should be able to vary across different types of consumers?</i></p> <p>NPDC supports the ability to vary minimum service levels requirements across different type of consumers. For example, NPDC currently provides a higher minimum level of service to its drinking water consumers who have register with the council as having home based medical treatment, such as kidney dialysis, in recognition of the higher criticality of a continuous water supply for these consumers.</p> <p>NPDC also notes that consumer protection functions should include ensuring that all communities receive adequate investment in their water networks. One of the concerns that a number of Councils have with the WSE model is that there is no assurance that smaller networks will receive investment. A consumer protection regulator could include ensuring all networks receive adequate investment.</p>



26	<p><i>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?</i></p>
	<p>NPDC supports using positive obligation to protect vulnerable consumers.</p>
27	<p><i>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?</i></p>
	<p>NPDC notes that the proposed governance model for the new three waters service delivery entities includes the issuing of Te Mana O Te Wai statements by mana whenua to the boards of the entities. Inclusion of Treaty of Waitangi principles risks creating duplication and increasing the cost of compliance.</p> <p>That said, NPDC would support the rationalisation of both the Te Mana o Te Wai statements and the Treaty of Waitangi principles into the scope of the consumer protection regulator. Not only would this provide an opportunity to simplify the proposed water service entity model; it would also provide the opportunity for regulatory enforcement of these aspects. This could prove more effective to ensuring they are delivered compared to a statement of expectation issued to the entity board.</p>
28	<p>A) <i>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?</i></p> <p>B) <i>Do you support any other options to manage the regulatory impost on community and private schemes?</i></p>
	<p>NPDC supports consumer protection regimes being applied to only the new water service entities on the basis that the consumers of private and small scale supplies have sufficient influence over the investment decisions and strategic decision making for these supplies.</p>
29	<p><i>Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?</i></p>
	<p>As per the similar question for economic regulation, NPDC broadly supports the enforcement tools proposed; however, we repeat our concerns that; with the new water entities not-for-profit motive, consumers will bear the cost of pecuniary penalties rather than them being funded from reduced dividends paid to shareholders.</p>
30	<p><i>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?</i></p>
	<p>As per question 17 – NPDC supports a long term benefits approach to assessing the preferred regulator and we would favour a new water consumer protection authority. NPDC submits that MBIE reassess the criteria used in their assessment and take a longer term view beyond the artificial urgency to establish the regulator ready for day one of the new water entities.</p>
31	<p><i>What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?</i></p>

	<p>NPDC supports allowing the regulator to develop incentives for high quality consumer engagement on the basis that international evidence demonstrates improved performance and customer satisfaction.</p> <p>NPDC also submits that this presents an opportunity to rationalise and simplify the overall compliance framework for the new water entities as the consumer protection regulator presents a more effective option to representing the voice of the consumer.</p>
32	<p><i>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?</i></p> <p>NPDC supports the creation of an expert advocacy body.</p>
33	<p><i>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?</i></p> <p>NPDC does not have a view on this.</p>
34	<p><i>What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?</i></p> <p>NPDC supports the discussion document view that a dedicated three waters dispute resolution scheme is required. NPDC notes that Taumata Arowai also has a wide-ranging consumer complaint function under sections 38-40 of the Water Services Act 2021, and recommends MBIE consider the relationship of the consumer protection functions and Taumata Arowai</p>
35	<p><i>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?</i></p> <p>NPDC supports the position outlined in the discussion document</p>
36	<p><i>What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?</i></p> <p>NPDC supports a mandatory statutory disputes scheme in order to deliver consistency at a national level.</p>
37	<p><i>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?</i></p> <p>NPDC does not have a view on this.</p>
38	<p><i>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?</i></p> <p>Just water service entities</p>
39	<p><i>Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?</i></p>

	Yes, NPDC supports this. Again, we also note that sections 38-40 of the Water Services Act 2021 provide for Taumata Arowai to consider consumer complaints.
40	<i>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?</i>
	Yes
41	<i>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?</i>
	NPDC supports the use of levies.
42	<i>Do you think that the levy regime should:</i> A) <i>Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR</i> B) <i>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?</i>
	Regulator led – as per the economic regulator question
43	<i>Are there any other levy design features that should be considered?</i>
44	NPDC does not have any further feedback on this issue.
<b>Implementation and regulatory stewardship</b>	
45	<i>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?</i>
	NPDC submits that; with the breadth of competing regulation including safety, environmental, economic and consumer protection, some form of governance is required in order to provide clear direction to the senior management of the new water entities. NPDC does not have a view on how this is best achieved. There is significant risk of overlap in the regulators.
46	<i>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?</i>
	NPDC does not have a view on this matter.
47	<i>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?</i>
	NPDC supports this on the grounds of providing an efficient system design.

**Other comments**

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