

To Ministry of Business, Innovation and Employment

Submission by

Waimakariri District Council

In the matter of

*Economic Regulation and Consumer Protection for
Three Waters Services in New Zealand*

20 December 2021



Introduction

Although the Waimakariri District Council generally supports the establishment of an economic regulator and consumer protection for three waters services, this does not translate to Waimakariri District Council support for the Three Waters Reform four entity model proposed to be mandated by Central Government. On behalf of the Waimakariri community the Waimakariri District Council strongly opposes the Government's proposal to merge local authorities' water services into four large-scale water service entities (WSEs). We provide this submission as feedback to the discussion document only. Waimakariri District Council also supports the submission prepared for Communities 4 Local Democracy - He hapori mō te Manapori by Castalia.

Succeeding review of the discussion paper on *Economic Regulation and Consumer Protection for Three Waters Services in New Zealand* the following questions and feedback are provided in response to the Ministry of Business, Innovation and Employment's request for submissions.

Roading/Stormwater

We consider there to be inconsistencies in terms of how stormwater assets have been categorised and described throughout the three waters reform process to date. There is contradictory information available concerning where Council managed Roothing/Stormwater assets end and the WSE managed Stormwater networks begin. Also it is not clear to us if the Roothing/Stormwater assets (assuming kerb & channel until discharge) are proposed to be subject to economic regulation. This could become challenging given Waka Kotahi provide subsidies for Roothing networks and they will remain under Council ownership/management; we wouldn't expect this portion of the network to be subject to economic regulation. Lastly in relation to stormwater, it is also unclear which run-off will be subject to economic regulation. For example, run-off from private properties that enters the Roothing network via kerb and channel that discharges to a river or stream. Is this river/stream managed by the WSE as a drain within the stormwater network proposed to be subject to economic regulation? We consider that stormwater, like water and sewer should be subject to economic regulation if managed by the four entities however the finer details need to be thoroughly considered and confirmed. This once again reinforces our concern about the four WSE model, particularly in relation to stormwater. Stormwater is integral to the shaping of land development, land use and community development. It is integrated with many other council functions and services. We have serious reservations about the ability of the four entities to manage stormwater and associated drainage and flooding issues in the best interests of communities.

Growth

We have concerns that Councils' role in planning for growth and water infrastructure provision has been misunderstood. Water infrastructure is different to electricity and telecommunications. Water infrastructure investment is immediately sunk (literally) once built, whereas electricity and telecommunications tend to be responsive or follow where settlement/growth is planned.

While the general principles of economic regulation are similar between the three sectors, the role of local decision making on investments is different. Growth of communities relies on three waters infrastructure and network planning being more aligned than in the

electricity sector. Councils have a key role in aligning investment in areas where development is to occur.

Three Waters infrastructure needs to be planned in advance allowing for growth in areas that Council re-zones or Developers drive, through subdivision. The entities, like Councils do now, will need flexibility to spend in areas that may not be the best option for the WSE as a whole from a financial perspective, but long term the benefit to the individual community concerned is significant. For example, Waimakariri District Council initiated the Eastern Districts Sewer Scheme and Ocean Outfall nearly 20 years ago, this was a significant project that planned for future growth and since has enabled development across the District, including efficiency gains through connecting up several smaller schemes. Without the ability to make decisions in the best interests of areas smaller than the entire WSE, District growth could be stunted by not having projects completed that allow for growth, this will have adverse effects on communities socially and economically.

Growth pays for growth in Waimakariri and as a result growth is not a burden financially, instead we consider it an enabler that is vital to the health and development of our District. Growth in Waimakariri has been significant since the 2011 Christchurch Earthquake, and this growth has assisted us in achieving large projects that enable further growth but also benefit our existing ratepayers. Growth is part of the reason why Waimakariri is in a position where financially the reform isn't critical for the long term life of our assets and service delivery.

Councils achieve significant economies of scope under the current arrangements. These will be lost in the four-entity model. Currently Councils have the ability to plan, deliver and manage growth internally across various functions (planning, land transport, water services and other services). This collaborative approach is economical and successful in terms of directing investment where it is needed, with the best interest of individual communities in mind. The four entities are unlikely to achieve such an approach to network planning even if there is engagement with Councils.

We have serious concerns that economic regulation will actively prevent the type of investment needed by the water entities to achieve the outcome outlined above. Careful consideration of these issues will need to be factored into regulation as it is developed.

The following provides questions and feedback in response to the questions outlined in the template provided, as well as content on other matters.

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

Response:
Waimakariri District Council (WDC) consider the establishment of an economic regulator, alongside a water quality regulator (Taumata Arowai) and improved environmental regulation important for lifting the performance of New Zealand's water services.

However, the potential benefits will be largely nullified by the proposed governance and ownership model of the WSEs. The regulatory regime cannot adequately or effectively regulate the four WSEs.

Given the significance of the WSEs, which will become by far the largest organisations in New Zealand, and as geographic monopolies, economic regulation and associated enforcement is likely to be helpful. However, the regulatory structure cannot possibly complement the flawed WSE governance structure.

WDC and 23 other local authorities (as of 20 December 2021) are developing an alternative governance and ownership model which will deliver on the shared objectives of central and local government. These alternative models allow a well-designed regulatory framework to achieve the goals sought.

Initial Castalia analysis shows that either improving the council-owned model, or creating Council owned organisations would work better than mega-entities.

In this submission, any response that is in favour of economic regulation should be interpreted as being on the proviso that the ownership and governance structure is changed so that economic regulation can be made fit-for-purpose.

Other comments:

Considering the purpose of Taumata Arowai and the proposed economic regulator, the greatest area where environmental outcomes and costs need to be traded-off will be stormwater networks. This needs to be balanced between Taumata Arowai and the Economic Regulator to ensure both aspects are considered rather than weighting one more significantly. The discussion paper does not seem to recognise this important consideration. When read in detail and as a whole it appears to us that the discussion paper has been developed in isolation of a full understanding of the three waters reform and how each component will work with each other to achieve alignment.

Section 44 states that one of the starting points is; *“Where stormwater network specific assets are attached to assets owned by another party (e.g. treatment devices attached to roading assets), these assets will be economically regulated.”*

This is an unexpected and concerning approach and implies that the three waters economic regulation will reach quite far into other Council services such as rural land drainage, roading, recreation and reserves, and buildings and property. A clear delineation is required as we consider this well beyond the scope of the three waters reform that has been promoted by the Government and advised to Councils to date.

Section 32 states *“...the New Zealand three waters sector...has not been subject to economic regulation to date. This is likely because attempting to regulate a three waters sector involving 67 councils would be more likely to delivery net costs rather than net benefits to consumers, and society more generally.”*

This statement is an incorrect assertion and reveals an underlying incorrect assumption that MBIE has held during the Three Waters Joint Steering Committee process. The sector has not been subject to economic regulation because the sector has been in public ownership and subject to public accountability mechanisms (local democracy). In recent history the local government sector has encouraged consideration of an economic regulation mechanism (see for example LGNZ discussion over the past decade). Finally, the government has not carried out a cost-benefit analysis of regulating 67 councils, and has not studied overseas regimes where hundreds of local government-owned water services are regulated, but in a fit-for-purpose way. Examples of effective local government ownership plus fit-for-purpose regulation were discussed with MBIE officials responsible for economic regulation during the Joint Steering Committee process in 2020 and have been overlooked here.

Sections 35 and 36 state:

“While the scale of the four Water Services Entities should significantly increase their likelihood of delivering these objectives, there is a flip-side risk that the entities become less

responsive to consumer and community needs as a result of their increased scale and expanding range of stakeholders. The Government is alert to this risk and has proposed a range of governance and consumer voice protections to mitigate the risk. However, economic regulation provides a strong and complementary regulatory backstop.

Pulling all these different threads together, the Government's view is that there is a strong case for economic regulation of the three waters infrastructure currently operated by local authorities. The remainder of this chapter explores the appropriate boundaries of the economic regulation regime."

This significantly understates the "flip side risk". MBIE has not provided a proper problem definition for justifying economic regulation here as a complement to the "range of governance and consumer voice protections".

The key issue will not be pricing (overcharging) because the entities are not-for-profit. Instead, the are risks that cross subsidies obscure inefficiencies and misdirected investment or even worse improper practice (or corruption).

Further, MBIE has not discussed the risk of undercharging and how an economic regulator can effectively address that issue.

Section 45 states; *"These kind of arrangements may be the subject of some form of service level agreement between the water services entity and relevant roading control authority or other land/asset owners."*

This is a significant understatement and demonstrates a lack of understanding of stormwater in the discussion paper. The interrelationship between stormwater and other Council services to the Community are very complex and intertwined.

Section 47 states; *"Including stormwater in the economic regulation regime also avoids the complexity and compliance costs that arise from having regulated and unregulated services operated by the same supplier. In particular, it avoids the cost allocation issues that can arise from needing to allocate common costs between the regulated and unregulated business operations."*

We consider this a weak argument but accept it is relevant. In keeping with this position, we think that through the water reform process the relationship between urban stormwater, rural drainage and roading has been underestimated. Based on the line of reasoning in the discussion paper it would lead to the conclusion that stormwater should not be included in the four large WSE and therefore should be left with Councils. Urban stormwater has far more interconnection with and relationship to other Council three waters services, and the proposed model will be very complex and have significant cost allocation challenges.

Section 48 states; *"Our preliminary view is that stormwater networks should be economically regulated, but recognise that the benefits and costs of doing so are likely to be more finely balanced than they are for drinking water and wastewater networks."*

The benefit is a trade-off between environmental outcomes and cost. Reference to a collaborative approach between Taumata Arowai, the Economic Regulator and Regional, District and City Councils should be included.

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?

Response:

Yes, we consider that stormwater networks should be economically regulated for the same reasons as outlined in our response to question 1. Fundamentally the stormwater system is a natural monopoly which has the risk of underperformance and overpricing. If stormwater is taken over by the WSE it should be regulated in the same way as water and wastewater to achieve consistency, accountability, efficiency and transparency as well as community outcomes.

The choice whether to regulate stormwater should depend on the costs of regulation. There are usually significant costs involved in “split-regulating” so if it is more cost-effective that one entity regulate related services, it should remain with that body.

Other comments:

p. 24, Section 55 states that; *“The Government’s three water reforms have been designed to result in new Water Services Entities that have sufficient scale to be able to affordably address the infrastructure deficit, and generally deliver better outcomes for consumers. Each of the four Water Services Entities will serve populations of between 800,000 to 1,700,000 consumers and maintain the strong natural monopoly characteristics that are present in the current service delivery arrangements.”*

We note that the large WSE will have stronger monopoly characteristics than Councils currently do due to;

- Size
- Disconnect from Community
- Lack of ability for Community to ‘vote out’ or otherwise hold anyone other than a minority of people on the Regional Representative Group accountable

The four WSE proposal will amplify monopoly characteristics which could have lasting adverse economic and social effects on communities.

The need for flood response is becoming more regular as a result of climate change as we continue to experience more severe weather events, it is currently managed in a very localised manner with teams who are familiar with the area and its assets deployed to inspect infrastructure and direct any emergency works required to protect life and property. This is not a one size fits all approach. Responding to flood events is reactive and requires staff to be willing and motivated to work in adverse conditions often during the night, this is not an issue in our District because staff are keen to use their expertise in these events to assist the communities we serve and have an existing relationship with. The WSE are proposed to cover vast areas, a concern raised prior to the Government mandating the reform was how flood management and response would work, especially given that in our District the current arrangements are successful.

With increasing environmental regulation and enhanced treatment of stormwater discharges being required, it is likely that the cost of managing urban stormwater networks will increase significantly in the future.

p. 25, Section 56 states; *“The Government has established governance arrangements to reduce the risks of entities becoming less responsive to community needs. The proposed governance arrangements for the Water Services Entities are set out in Figure 6 below, and obligations on each of the Water Services Entities to:*

- *establish consumer fora to act as a key vehicle for consumer views to be heard on issues such as price-quality trade-offs*

- *engage with the wider community in the development of key strategic documents such as the Statement of Intent, Asset Management Plan, and Funding and Pricing Plan.”*

The second bullet point should say “engage with wider community” **and Councils as owners**. There is a real lack of acknowledgment of local Councils through the entire discussion paper. This is an example where there is an important and obvious role for Councils, not only as the owner of the three waters assets, but also as a representative of the community.

In terms of Figure 6; why not include Councils as part of the consultation and engagement?

p. 25, Section 57 states; “While the governance arrangements and consumer engagement requirements will ensure that consumer voices are heard by the entities, the scale of the entities and the absence of competition means there are still significant risks that the entities do not act in the long-term interests of consumers.”

We agree with the point made and add there are very significant risks that the entities do not act in the long term interest of their collective Customers and communities. Economic regulation will help to avoid this.

3

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

Response:

Refer to question 1 response as follows; Waimakariri District Council (WDC) consider the establishment of an economic regulator important, however, economic regulation is likely to fail in respect of the proposed four WSEs. The government should address the ownership and governance deficiencies in the WSE model, and revert to an alternative approach to reform so that fit-for-purpose economic regulation can be applied.

However, if the WSE proposal proceeds, given the significance of the entities, being by far the largest organisations in New Zealand, there needs to be economic regulation and associated enforcement. Firstly in order to protect communities, the assets, and to force accountability, but also to assist the entities in managing Three Waters responsibly on behalf of communities as they establish and set new processes.

The economic regulator will have a significant challenge to regulate four WSEs. It must monitor information from very large entities that cover immense distances and diverse communities with idiosyncratic water networks. The regulator must also take into account socio-cultural objectives that are diverse, and possibly in conflict.

Yes, they should be to avoid issues such as under-investment, low valuations and other concerns raised by the Government (when justifying the Three Waters Reform case for change) from occurring in the future. The entities should be subject to economic regulation to avoid these issues arising given they have been identified as pitfalls of Council processes. Although economic regulation could successfully tie into the current system (Three Waters administered by Councils), however if the WSE model goes ahead, we do not consider it worthwhile economically regulating Councils before the handover in 2024. This is considering the resource required to set up such a process which won't be long term, at a time when staff will be required to resource the transition on top of business as usual. Regardless of whether Three Waters services remain with Councils or go to larger entities, economic regulation should start to come into force in mid-2024.

The four entities need to be regulated in such a way that is transparent to its local community. This regulation needs to clearly identify efficiency gains, provide accountability

to communities, deliver a high level of transparency particularly around asset management and lead infrastructure for growth. This all needs to occur for an affordable cost.

The entities will be new and will require shaping which can be done to some extent by Taumata Arowai, but establishment of an economic regulator would help ensure that all aspects of the entities are managed appropriately to provide the best outcome for Communities.

Section 58 states:

“One area that is pivotal to the Government achieving its Three Waters Reform objectives is the delivery of significant efficiency gains over time. Overseas experience suggests that economic regulation has played a critical role in driving efficiency gains that are able to be shared with consumers via lower prices and improved quality of service, compared to the prices and quality consumers experience in the absence of regulation.”

This is true with reference to profit motivated water utilities. It is less clear in relation to not-for-profit utilities. Indeed, New Zealand will be engaging in a globally unique experiment with this proposal by attempting to use economic regulation on WSEs responsible for wide geographic areas, diverse communities, subject to competing objectives from a diverse range of stakeholders as well as central government.

We would encourage MBIE to identify which overseas jurisdictions have successfully managed to use economic regulation in similar circumstances. When this exercise is completed, please share the results.

We refer MBIE back to our point that the ownership and governance structure of future water services (whether retained by local government, reformed into Council owned regional or sub-regional entities, or under the government’s flawed WSE proposal) should be addressed to determine where and to what extent economic regulation tools should be used.

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.*

Response:

Domestic self-supplies where one domestic dwelling has its own supply, as defined in the Act is excluded from the Water Services Act and therefore shouldn’t be subject to economic regulation. Noting that the costs would likely outweigh the benefits, and these schemes are of a scale where users can have a direct line of sight to owners.

Because the WSE won’t manage self-supplies such as private wells, the economic regulator shouldn’t be involved. This is a water supply that the private landowner(s) is responsible for managing and maintaining to appropriate standards, similar to a Right of Way. We also note that smaller collectively owned supplies will have far more direct line of sight to the owners of the scheme and therefore an ability to directly engage and influence the trade-off between cost and level of service. The main concern is the scale and revenue requirements of the 4 entities. It makes sense to initially focus on them. Other entities can be subject to regulation later. On balance, the cost of compliance with economic regulation for small community is likely to be prohibitive, however given the number a supply source risk could be significant.

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

Response:

Yes, information disclosure should be required in a standardised and accessible format that relates to costs, quality and standardised performance metrics. This should be made publicly available and subject to LGOIMA requirements to promote transparency and trust within communities. As the WSE will be monopolies with a risk of developing a lack of incentive to charge efficiently while delivering services to appropriate standards, information disclosure regulation is a basic minimum.

Other comments:

p. 29, Section 71 reference to the absence of a profit motive weakens the argument for an economic regulator. We do not agree with this premise. A counter argument could be put that the motive of requiring a profit helps drive efficiencies. It's not the risk of profiteering (over-charging) alone that is the problem here. It's the fact that as "natural" monopolies the WSEs have little incentive to charge for their services efficiently or to supply water to appropriate quality standards. That is to say, low prices are a risk, not just high prices. Our view is that there are benefits of price quality regulation regardless of whether there is a profit motive or not.

p. 29, Section 72 states; ***"The lack of profit motive for councils does not appear to have been sufficient to ensure New Zealanders receive high-quality, affordable water services, or that water infrastructure is managed efficiently."*** *Overseas experience regulating water services, as well as domestic experience regulating other utilities, suggest that price-quality regulation is a highly effective tool in attaining the sorts of outcomes the Three Waters Reform aims to achieve, i.e. incentivising suppliers to provide affordable, high-quality water services. 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."*

We do not agree with this broad brush statement and contend that Councils do manage the current three waters services efficiently given the legislative constraints that they operate under.

Further, we note that MBIE do not provide any examples of the overseas experience where price-quality regulation was highly effective, and how that overseas experience relates to the WSE model where WSEs will be not-for-profit, have complex governance and oversight mechanisms, and have competing socio-cultural objectives to achieve, as well as the consumer welfare/economic efficiency requirement of the regulator. This is a globally unique situation, and unlike any overseas model.

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

Response: We encourage MBIE to first define the problem that economic regulation is attempting to solve. Once that is completed, the appropriate economic regulation tools can be selected. The potential problems might be:

- Underinvestment/undercharging?
- Potential overinvestment/overcharging?
- Productive inefficiency due to lack of profit motive?
- Allocative inefficiency due to lack of profit motive?

Price-quality regulation can be effective in some cases. However, in this case, the WSEs will have highly complex governance arrangements. Management, which has direct oversight and ability to influence costs and the quality of service is four steps removed from the

customers (voters). The regulator will have challenges assessing whether costs are justified given the competing socio-cultural objectives. We refer MBIE to the Communities 4 Local Democracy submission prepared by Castalia on this point.

If the WSE model is chosen, then price-quality regulation could be necessary. In any case, it should have a phasing in period. Level of service and standards set out by Taumata Arowai should be contained in a framework that informs price-quality regulation in order to steer WSE improvements. In order to provide for community well-being long term, the price quality regime needs to be multi-dimensional ensuring sustainable, environmental and intergenerational outcomes for all.

To avoid full establishment from day 1, a staged approach could be considered with stage 1 to include information disclosure requirements while the WSE establish their capital investment requirements initially. Although a timeline for review and commencement of stage 2 being price quality regulation should be planned from day 1, it is likely that this will be driven if/when evidence of overcharging or quality issues arise. Hopefully by this stage investment and revenue requirements for the 4 entities will be clearer.

Level of service provided by the entities may vary based on geographical location or community preference. For example, if a chlorination exemption is in place when the WSE takes over in 2024 the life of the exemption will be given effect to and then it is proposed that the community affected will be consulted with in terms of applying for further exemptions. This situation would affect price-quality, and proves that not all areas will be subject to the same quality. Administering water, wastewater and stormwater is not a one size fits all.

Other comments:

p. 30, Section 76 states; *“Combining the strong objectives that the government has around service quality and affordability, and the reformed three waters sector comprising four large Water Services Entities, our view is that individual price-quality regulation is the most appropriate form of price-quality regulation.”*

We agree, due to the monopoly that the 4 entities will have and the absence of electoral accountability that will exist (no elected members like in local government). This lack of accountability combined with a lack of profit drive could result in inefficiencies, price quality objectives would help reduce the risk of this scenario and provide better service to communities.

7

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

Response:

Again, our response is provided on the basis that the WSE model is fundamentally flawed, and economic regulation is unlikely to be effective.

However, if the WSE model is pursued, individual price-quality regulation is likely to be necessary because all four WSEs will have different sizes and manage dozens of individual idiosyncratic networks and systems. There are different topographies, geographies, climatic conditions and localised differences that matter for service provision. Therefore, individual price-quality regulation is unavoidable and necessary. It should be noted also that standards are intended to increase when the WSE are established, therefore standards today should be a baseline that is not reduced.

Regional, City and District Councils should have a voice in establishing the regulations based on local knowledge, as well as providing mechanism to advocate for communities.

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?

Response:

Again, our response is provided on the basis that the WSE model is fundamentally flawed, and economic regulation is unlikely to be effective. We note that this section of the Discussion Paper does not discuss the role of cross subsidies in the price-setting process, the speed making the new investment that the government says is required and the pricing principles that should apply. These are critical matters.

A) Yes, this should be transitional to avoid rapid change for ratepayers and to ensure standards are specific to the community concerned.

However, we do note that the timeframes for introduction do not match with the government's advisors claims about the benefits of reforms and when these will materialise.

The draft timetable at para 82 suggests an advance commitment to implementing price/quality regulation. The issue here isn't simply whether economic regulation should be implemented gradually, which we support. As we all learn more about the scale and nature of the challenges facing the WSEs. The regulation of the WSEs would sensibly start with information disclosure and move to price/quality regulation as/if needed.

B) A transitional price-quality path should be developed by the Economic Regulator in conjunction with Taumata Arowai as well as Regional, City and District Councils. As mentioned in question 7 response, input from local government would not only provide local knowledge but also provide opportunity to advocate for communities.

It is important to note that the model for calculating regulated maximum allowable revenue as described in section 22 on page 16 is a completely different model to the way Councils fund the lifecycle of their assets. Under the proposed model for the 4 new entities they will effectively not fund depreciation. The entities will deplete the asset value over time without building any financial reserves for future renewals.

In addition to the above but still related to part B) of question 8, we consider there to be significant risk in using the Government Policy Statement mechanism. A regulatory process should be clear and unable to be influenced politically or otherwise. We consider implementation by an independent economic regulator to be more suitable.

For clarity we do not support the use of the Government Policy Statement mechanism. This will inevitably risk politicising the regulatory process.

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?

Response:

A) Yes, we consider that the regulation should be reviewed, but the Minister should rely on

advice from Regional, City and District Councils as well as the economic regulator. In addition, alteration to the scope of the regulations is essential, but should only be allowed by Order in Council not by an individual Minister. This will preserve the opportunity for challenge in front of Parliament's Regulations Review Committee.

B) We consider that there should be consideration of community wellbeing and economic impact on communities including employment.

Also we agree with those listed in Section 90, as follows;

- *“whether a supplier has the ability and incentive to exercise substantial market power in, taking into account the effectiveness of existing regulation and governance arrangements (including ownership arrangements and consumer voice arrangements)*
- *whether the benefits of extending or reducing economic regulation materially exceed the costs, and the form(s) of economic regulation that should be extended or reduced*
- *any material long-term efficiency and distributional considerations associated with recommendations to extend or reduce the application of economic regulation.”*

Such an approach is sensible to include in the legislation. However, we doubt whether it will ever be used in reality.

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?

Response:

Again, our response is provided on the basis that the WSE model is fundamentally flawed, and economic regulation is unlikely to be effective.

A)

The purpose statement is broadly in line with the accepted understanding of the role of economic regulation in infrastructure

B)

This highlights that policymakers have not understood the role of public ownership and governance in improving outcomes for consumers. Once the public ownership and governance structure is well-designed in a way that is responsive to customers, the economic regulation regime can be right-sized. This would mean the sub-purpose could be targets at aligning investment incentives with the long-term interests of consumers.

The Discussion Paper seems to replicate the telecommunications and electricity sector, however these services are very different to supplying water, wastewater and administering

stormwater networks and associated discharges. Electricity and telecommunications have fewer variables, they are supplied in the same form across the country so nationally applied standards are more easily met. In keeping with this theme that appears throughout the discussion paper, it is considered that the repeated reference to consumer is a reflection of this industry administering a transactional relationship with its Customer, as opposed to working with communities. Noting that the electricity, commerce and telecommunications regulation has served small communities poorly to date.

It isn't anticipated that the WSE be operated in isolation from Councils and communities solely for the purpose of providing services for a charge. Communities value the ability to input and have a strong sense of ownership over their three waters assets.

Another significant complexity that further widens the gap between supplying electricity and three waters (especially water) services is that it is challenging to supply water services to individual customers when they have different quality characteristics to their neighbours, or carry out urban stormwater initiatives that impact on service levels to whole neighbourhoods and communities. This is not the case for electricity supply where electricity consumers can have different interpretability conditions. For this reason we consider it will be more meaningful and effective to engage with whole communities rather than individual customers.

C) and D)

These important matters will be exceptionally difficult for a technical economic regulator to understand and deal with.

When governments try to achieve socio-cultural objectives in the delivery of infrastructure they typically do not use economic regulation to achieve these. This is often why governments (local and central) **own and govern** network infrastructure utilities directly. Further, where socio-cultural objectives need to be met, best practice is for those to be dealt with directly, and not with cross-subsidy or blurring the lines between easy to measure outcomes (quality of service, cost of service, prices, and efficiency) and outcomes that are more challenging to measure.

Regardless of whether the regulator has a specific and formal obligation to review whether WSEs' performance is in line with Treaty of Waitangi principles and whether the rights and interests of iwi/Māori are factored in, the regulator will have to assess investment decisions by the WSEs in light of these matters. The WSEs will have to assess costs and benefits of investment decisions ex ante for outcomes for iwi/Māori, and therefore the regulator will also have to assess whether those investments were efficient. This is an unusual situation for an economic regulator and will be challenging to carry out effectively.

Other comments:

p. 35, Section 92 has a very narrow focus outlined in sub-sections a) to d).

p. 36, Section 96 states; *"One modification that may be desirable is to amend or remove limb (d) of the above example because the Water Services Entities that will most likely be the focus of the economic regulation regime will be publically owned statutory entities that will not have a profit motive, access to equity capital, or the ability to pay dividends. However, this modification could potentially limit the regime's ability to regulate private, community or other hybrid schemes in the future if they were to reach a scale that would make economic regulation desirable."*

The statutory objectives of economic regulation as it relates to three waters should include a requirement to be responsive to local community needs and to ensure three water services providers invest to enable the development and wellbeing of communities.

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?

Response:

We consider that the regulatory regime should build on existing institutions to the extent possible, and where complementary principles and regimes exist. However, given the unique features of the WSE model, a sector specific regulation regime would be appropriate that builds off well-understood principles from economic regulation policy in other regimes. In any case, the regime will need to carefully take into account the different financial circumstances (including starting positions and investment needs) of the four WSEs and their communities. As described throughout the document, delivering three waters services is complex and can vary based on multiple factors therefore regulation needs to reflect this. Three waters, in particular stormwater are very different community services from electricity and telecommunications.

Noting that the electricity, commerce and telecommunications regulation has served small communities poorly to date.

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?

Response:

Unsure, however there may be a case for a shorter initial regulatory period if information disclosure is introduced ahead of price/quality controls.

Five years is a common period of time in overseas regulatory regimes, so should be the starting point, with adjustments from there if sufficient reasons exist.

Other comments:

In p. 40, Section 113 on the third line, what is meant by "*altering depreciation*"? This is deeply concerning. You cannot alter depreciation, this would not be transparent. Funding of depreciation should be handled in a transparent manner, potentially this could include being transparent about altering any time period over which depreciation was allowed or required. We support the approach of any changes to costs to ratepayers/customers being phased in, while allowing for funding of necessary three waters infrastructure. The mechanism for managing this transition needs to be fully open and transparent.

Its also an important point to note that the Government is burdening the new entities with non-three waters debt on day one. This is not aligned with the practice that Councils adhere to in terms of ring-fencing projects and ensuring that rates collected for a specific purpose are spent on that type of asset (e.g. water debt has to be spent on water projects).

p. 40, Section 116 states; "*Active approaches that set out robust efficiency challenges or targets that are accompanied by rewards (e.g. fast track investment approvals) if they are achieved, or penalties (e.g. consumer rebates or compensation) if they are not achieved.*"

We need to be careful not to drive unforeseen outcomes that may not be in the best interests of the Community overall. Potentially initial passive phase over 3-5 years and then consider active carefully beyond this point.

p. 41, Section 117 states; "*Economic regulation regimes in New Zealand have tended to take a passive approach to the achievement of efficiency gains. However, the Government's*

strong focus on affordability and the potential for significant amounts of free cash-flow to be available - because of the absence of active owners demanding a return on equity through dividend payments - suggests that a more active approach to efficiency is highly desirable. This focus on cash efficiency is likely to require some modifications to the 'building blocks' approach outlined in Chapter 2, potentially to provide a stronger focus on ensuring that Water Services Entities having the minimum efficient level of cash required to finance their operations."

It is important to note the significant amounts of free cash flow, although it is not clear this will be surplus. Possibly this is because the entities are not going to fund depreciation as Councils do. This is a significant departure from current practice. If they have surplus free cash flow this may be because they will set tariffs at a rate to recover costs plus a risk margin. When the risk does not materialise, surpluses will be made.

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?**

Response:

Again, our response is provided on the basis that the WSE model is fundamentally flawed, and economic regulation is unlikely to be effective. A) Yes, the regulator should be required to do this.

B) Yes, the regulator should be able to minimise price shocks. However, the regulator should have regard for intergenerational equity and avoiding price shocks. Therefore it may be appropriate to set a limit on the number of price periods that "avoiding shocks" can be used as a justification for price levels. For example, two pricing periods may be an appropriate limit.

C) Passive 3-5 years, then review. There should be a requirement of the regulator to look at sustainability and how water is used, including leakage of the system.

Other comments:

p. 39, Section 108, third bullet point states; *"Input methodologies typically cover issues such as the: allocation of common costs where a regulated supplier undertakes activities that are economically regulated alongside those that are not (e.g. if a supplier undertakes commercial activities in a market where there is workable competition)"*.

Agree with the above with the additional of the following aspects;

- Operations
- Capital
- Level of Service
- Growth
- Renewals

p. 39, Section 111 states; *"Our preliminary position is 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. However, this is a 'on balance' judgement."

Agree, it will be important for entities to establish with some idea of what the rules of the game will be, this will influence how they set themselves up.

In relation to p.41, Section 120; what about sustainability, resilience, well-beings, economy, employment, cost to service, deprivation, lifestyle choice, level of service? These appear to have been missed but are all significant to the conversation.

In relation to p.42, Section 121; is inter-entity cross subsidisation a consideration? We understood that a significant driver for reform was to have equity across the country. However this is not achieved in the current proposed four WSE model unless the Government is considering cross subsidisation between entities.

Section 119

MBIE has not considered the impact of a lack of profit motive on the WSEs. MBIE has also overlooked the lack of effective enforcement mechanisms on the WSEs.

If the regulator sets an efficiency target, and the WSE fails to meet it, how will breaches be punished? If the regulator fines the WSE then the fine will ultimately be paid for by consumers in the form of lower quality service (because there are no profits to impact on with fines).

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?***

Response:

A) This is a very important question. It is probably the most important question to address first before WSEs begin implementing plans.

Importantly this question relates to the "structure" of three waters prices, rather than to the absolute level of such charges. But even so, it envisages the politicisation of water pricing. The policy objectives need to be consulted as a primary document and should start with Councils and Commerce Commission.

The government determined that WSEs should harmonise prices (that is, use cross-subsidies). Therefore, pricing levels cannot be used by the regulator as a measure of performance relative to costs. We are surprised that MBIE has not acknowledged the difficulty the regulator will face. It will have to accept political decisions about price levels (harmonised) and then take an active role in monitoring cost of service.

The present system given that council asset owners are elected bodies, allows for local decision making subject a democratic process at a community level. But under the large WSE model the proposal is to introduce scale efficiencies in the provision (including the financing) of water services. This key objective of the reform will not be achieved if Parliament decides the structure of water service charges. Inevitably this is likely to affect the total level of these charges. Parliament should be kept right out of such matters – or the delivery of water services should be left, as now, to locally accountable elected bodies.

It is essential that any policy objectives including the structure of the three waters prices is established in a transparent manner in full consultation with communities, iwi and councils.

None of the above (a, b, c) we suggest d), being Councils as owners and community representatives in conjunction with the Government and Ministers.

B)a) This should include Councils as owners and community representatives. Not just Government or Ministers. If this “reform” is to proceed then the logic of treating water services as quasi-commercial needs to be followed through. Therefore the WSEs should be responsible for determining the structure of their prices/charges. The role of the regulator is to manage a process to review and approve this. The Government and Ministers should be kept right away from such matters or the whole purpose of independent regulation will be undermined. If there is to be any political oversight of the pricing this should be through Councils as the asset owners and elected community representatives.

C) Very similar to set up that is used for electricity, but with a more robust assessment of pricing with the communities involved.

Pricing needs to reflect health needs of people (WHO), Te Mana o te Wai, sustainability, climate change, and resilience.

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?

Response:

Broadly we agree with this, as per the preliminary view outlined in Section 135, as follows; *“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.”*

Above all, the right to judicial review must not be excluded.

Given the sums of money likely to be at stake the opportunity for any merit appeals is bound to be utilised. Therefore it should be limited, or the whole process will consume even more time and resource.

16

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

Response:

We broadly agree, compliance and enforcement by the regulator will be critical. Collaboration between Taumata Arowai and the economic regulator’s compliance teams is vital to ensure the approach isn’t disjointed, and to ensure that the best outcomes are

achieved. This relationship will require information sharing across organisations which will require coordination in terms of information disclosure.

However, the fundamental point has been missed: as not-for-profit entities, any fines or punishments for breaches will ultimately be paid for by customers. The accountability mechanisms within the WSEs are also removed from customers/voters; management has four layers of governance and appointment boards between it and the voters (who are diluted by up to 21 other local authorities and in one WSE over 60 iwi). Therefore, the enforcement mechanisms is unlikely to be practical and effective.

To be effective, penalties should involve material impact on Board and Management level. That is, breaches should involve loss of position and remuneration. Again, without the profit-motive and truly enforceable penalties, incentive based regulation is difficult,

The regulation should;

- Encourage open disclosure, transparency and learning
- Should be proactive and two way
- There should be more focus on proactive education, regulator getting along with supplier in a collaborative manner
- Phase in over-time to allow establishment
- Ratchet up provisions when deliberative lack of action (warning systems)

Compliance teams should be established to administer a collaborative approach that supports entities to become compliant with provisions increasing over time.

It is important to recognise that the tone of the relationship will be set by the regulator not the WSEs. This is another argument for using the Commerce Commission if price/quality regulation is envisaged. We recognise the Commission has experience in managing these kinds of relationships, however are concerned that they do not have experience and understanding in three waters. A phasing in and collaborative approach will allow time for the WSEs and the regulator to gain the necessary knowledge and experience.

Other comments:

Agree to the following with all policy direction (well-beings), p. 49, Section 141, first bullet point which states; *“For these reasons, international experience and experience from other sectors in New Zealand suggests that high performing economic regulators: are independent and operate at arms-length from Government and regulated suppliers in achieving their statutory objectives.”*

Having the economic and quality regulator as one WSE does have some merit. This would allow the most for costs/quality trade-off with one regulator in relation to p. 50, Section 145, Taumata Arowai bullet point, as follows; *“In our view, the assessment criteria above suggest there are three potential options for the economic regulator:*

- *Taumata Arowai – Taumata Arowai is a new ‘the new’ (there is a typo in the discussion document here) drinking water regulator that will also have functions regulating the environmental impacts of wastewater and stormwater networks. The entity is currently in establishment phase and is expected to commence its regulatory functions in the second half of 2021 when the Water Services Bill becomes law. As a Crown Agent under the Crown Entities Act 2004, Taumata Arowai is required to give effect to Government policy.”*

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.

Response:

On balance, we consider the Commerce Commission to be the most appropriate economic regulator should price controls be a focus, if regulation was to only include information disclosure Taumata Arowai may be suitable to administer this. It is important to build on existing institutions that have credibility, and in-house understanding of the key functions of economic regulation.

However, we have significant reservations. If the Commerce Commission are responsible they must work closely with Taumata Arowai and Local Government to achieve trade-offs. In the future, a Water Commissioner could be established to achieve these objectives. As articulated elsewhere in this submission we consider that neither the Department of Internal Affairs, nor the Commerce Commission have a good understanding or handle on three water services, particularly in the challenging areas associated with Stormwater. However given the Commerce Commission's expertise in price, quality and scrutinising capital investment programmes of monopoly utility companies, we believe the Commission could acquire the necessary water expertise over time. The Commerce Commission has by definition a very narrow focus and mandate that would not necessarily fit well with three waters services and we expect there would need to be some allowance for transition from the current model to the new regime.

It will be important that the economic regulator treats all WSEs consistently to ensure a dependable relationship and associated processes are established with Taumata Arowai as well as upholding Te Mana o te Wai. A consistent approach will also ease comparison across the WSE allowing differences to be reconciled.

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?

Response:

Yes, we agree that these costs should be funded via levies on regulated suppliers acknowledging that this is ultimately paid for by the communities served by the suppliers. This should be very transparent and available for public scrutiny with an expectation that the bill received by members of the community will include a breakdown and shows this costs and charge.

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?

Response:

We do note once again that Councils as the asset owners and community representatives, have not been considered in this assessment. We also consider that Ministry involvement would politicise the process of setting levies which could have adverse effects on the process.

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

Response:

There should be consideration to whether cross subsidies between entities, in relation to levies, could be used to achieve best national outcomes (e.g. support tourism, national health and economic benefit, national resilience).

Other comments:

p. 60, Section 166 states; *“As with the economic regulation regime, a clear legislative statement of the objectives of a consumer protection regime can help to guide the interpretation and implementation of that legislation. The paramount objective of the consumer protection regime will be improving service quality to reflect the demands of water consumers, including through:*

- *enhancing the quality of water services over time (focussing on aspects of quality not regulated by public health, environmental or economic regulators)*
- *providing consumers with a strong voice in how water services are delivered*
- *providing consumers with effective redress where the quality of service does not meet appropriate standards*
- *providing consumers with transparency regarding water charges.”*

We agree but if Councils had more direct control this would help. Again there should be reference to and consideration of Communities, both present and future, rather than just consumers.

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?

Response:

A) We agree that additional consumer protections are warranted given the health implications relevant to the sector when delivering services to communities. We see real value in a mandatory consumer complaints resolution scheme. If nothing else it can be a useful safety valve on many individual customer issues.

B) Individuals and communities will need help and empowerment to deal with massive monopoly entities.

Other comments:

In reference to p. 61, Section 168, bullet point 7, requirement should include engaging with Communities, not just consumers and also engaging with Councils. This is consistent with other feedback we've provided. This document lacks connectivity between Communities, the regulator and Councils.

p. 62, Section 171 states; *“Mandatory codes involve the regulator setting minimum service quality requirements that apply to some, or all, regulated water service providers. The main benefit is that the regulator is able to directly control the requisite quality service levels.*

- *However, mandatory codes can be costly to develop, monitor and enforce, and may also impose significant compliance burdens on industry. Some of these costs may be*

able to be mitigated by allowing or requiring the code to be periodically reviewed, so that it focusses on areas of service quality that have the biggest net impacts on consumer welfare.”

We consider that one size fits all mandatory codes could lead to sub-optimal outcomes. Careful consideration needs to be given to achieve the best overall community outcomes rather than being driven purely by mandatory compliance.

We agree that minimum service levels are likely to be desirable, especially in response to large monopolies. But they are likely to take time to develop. We see merit in allowing the need for them and their optimum content evolve. The whole regulatory system does not need to be in place on Day 1.

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?*

Response:

Yes, we agree that the consumer protection regulator should be able to issue minimum service level requirements via a mandated code. We agree that it is critical that the local community has a voice in this process, as water quality needs to be driven by local considerations. Discussions about level of service should be had at a community level given that a higher level of service costs more (generally), but minimum standards may not lead to optimal outcomes.

Also, as noted throughout our submission, since consumers of water services can't switch suppliers and since the services they receive often can't be individualised, it makes sense to recognise the role of communities acting on behalf of their individual members.

Other comments:

Local mana whenua should be involved in setting minimum service level requirements that affect water quality. Again, this highlights a weakness of the large-scale WSE model. Mana whenua interests are represented at Iwi level through the regional representative group, whereas currently Councils, including WDC, have relationships with hāpu and rūnanga.

WSE should work closely with communities to educate in terms of water demand management and efficiency, obligations under bylaws and to enhance water literacy in terms of level of service agreed to be delivered.

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

Response:

Yes, they should. Guidance is good, but should be non-mandatory.

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?*

Response:

Our preference would be for a single piece of regulation to cover economic and consumer protection, but this will need careful consideration. MBIE could be clearer about the matters

it expects would not be regulated by Taumata Arowai. We expect these to include service quality matters that are over and above safety levels regulated by Taumata Arowai.

It is only if we move to price controls that the Commerce Commission or a stand-alone water services regulator needs to determine quality levels, since they will be intrinsically related to the price limits (If prices were controlled but not quality then monopolies would be incentivised to allow quality to deteriorate. Likewise, if quality alone was the driver, this may become unaffordable for communities without the oversight of economic regulation).

Other comments:

p. 65, Section 182 states; *“Vulnerability generally refers to the likelihood of a negative outcome or experience of harm, which is a product of the circumstances of a consumer that result in them experiencing barriers to participating in essential services.⁵⁶ Vulnerability can be a transient, sporadic, or permanent state. Many water consumers experience vulnerability at some point in their lives, and there are many factors that can give rise to it:*

- *experiencing financial instability or low financial resilience (sudden, acute, or chronic) causing genuinely difficulty in paying their bills*
- *a risk of harm to health or wellbeing by reason of age, health, disability in the case of disconnection*
- *dependent on supply of a particular volume of water for critical medical treatment*
- *an inability to advocate for, or represent, their interests in interactions with water suppliers (including small businesses)*
- *difficulty in obtaining or assimilating information*
- *an inability to buy, choose, or access adequate water supply where this access to a reticulated network is not available.”*

In relation to the last bullet point, we are unsure what this means. Current unserved properties should not have an expectation that they will be given services as this may not be efficient, affordable or practical.

25

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

Response:

Yes, we consider that they should be able to vary, but again this should not be focused just on consumers, a community lens is required here and Councils should play an important role in this area. This already exists for example the difference between an on demand even supply and rural trickle feed service.

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?

Response:

We strongly agree, this should be made possible. However, it would be preferable for the ownership and governance structure to be designed to ensure that social wellbeing goals are given appropriate weighting, rather than hoping a technical regulator has the capability to address these issues.

Given the size and monopoly characteristics of the entities, this will be essential. This is particularly important as individuals and communities will no longer have the current benefits of democracy they currently have with Councils delivering these services on their behalf.

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?

Response:

The Three Waters framework has to be fair and equitable for all. We support factoring the rights and interests of iwi/Maori into the design of a consumer protection regime for the three waters sector, but are unsure how it should work. Again, this highlights the issues with having competing objectives and interests to serve, and then overlaying regulation and consumer protection principles which is ill-suited to these matters. It would be preferable to design an appropriate ownership and governance regime, to ensure those matters are reflected in water investment and delivery decisions.

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?

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

Response:

A) Yes, it should apply to all water suppliers. If the four WSE are established it should apply to them. However we note that it probably will not be efficient or cost-effective for consumer protection to apply to a closely-held water scheme.

B) It is important to understand the delivery of smaller Community and private schemes as to the pricing and health and safety risks that may exist.

29

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

Response:

We broadly agree. Initially this should proactively be based on educate, supporting and collaborating. This will require a good level of funding and resourcing provided. Over time it is expected that there would be a transition to using more of the reactive compliance tools provided the proactive initiatives are also continued.

There should be mandatory reporting to Councils to hold entities to account.

Other comments:

Should "Economic Regulator" read as 'Consumer Protection Regulator' within p. 73, Section 204 as follows; "Pulling together the considerations in the previous two paragraphs, we suggest an appropriate assessment criteria for evaluating options for the economic regulator is:" This appears to be a typo.

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?

Response:

Yes, and in relation to earlier Question 17, we agree with some serious reservations, unless regulation was to commence with information disclosure alone (as previously discussed). We agree but with some serious reservations. There is an apparent benefit in being the same as the Economic Regulator. We do raise the following questions;

- What about 'Community'?
- How can Councils be advocates for broader interests for Community?
- How can Councils have teeth in this system?
- If Councils are owners, how can they assert their rights as owners?
- Again, there is a narrow focus on consumer not Community.
- We are concerned that there is a lack of understanding of three waters.

It is important to recognise that identifying consumers in the three waters context is not necessarily straightforward. Examples include whether wastewater overflows may be experienced by a group of consumers and stormwater networks often do not provide single consumers with a service. A stormwater event may flood a property, a subdivision, or a large part of the whole community. A drinking water contamination event may also have detrimental health effects on a wide portion of the community.

Other comments:

p. 76, Section 208 states "Recognising these barriers, the Government has agreed that mechanisms to give consumers and communities a voice should be incorporated throughout the design of the Water Services Entities and the broader system to ensure that the system is responsive and accountable to consumers and communities."

It is good to finally see reference to 'communities', this is lacking throughout the document.

p. 76, Section 209 outlines the three obligations of the Water Services Entities to allow for consumer and community voice, these include representation on the Governor's Representative Group, establishment of a consumer forum and engagement, publishing and reporting requirements. There is no mention of engaging with Councils as advocates and representatives for our communities. This is concerning and needs consideration.

p. 77, Section 210, again this section needs to include reference to Councils and their communities.

Further, this paragraph also overlooks that incentive-based regulation will be difficult to implement when the incentives cannot be driven by effective enforcement. Incentive regulation with sanctions for poor performance tends to work when regulated parties have a profit motive.

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

Response:

Yes, it should be an obligation to engage with Councils, again this should be with communities not just the consumer. As discussed above consumers can be an individual or a group of the community.

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?

As per Question 33 response.

We consider that naturally Councils should take up this role given they already represent the affected community and have existing historic and institutional knowledge in this area. The new system should not be complex, especially initially. However the entities should fund Councils to take on this role as they will not be in a position to rate for it.

How can Councils play a role on behalf of Communities in this? Our view is that the need for an expert advocacy body who can advocate technical issues on behalf of consumers is not necessary, because Councils are already engaged with communities and in a position to perform this function.

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?

Response 32 & 33:

How can Councils play a role on behalf of Communities in this? Our view is that the need for an expert advocacy body who can advocate technical issues on behalf of consumers is not necessary, because Councils are already engaged with communities and in a position to perform this function. However there is concern among less resourced territorial authorities that they may not have capacity or capability to provide technical water advocacy services for their communities going forward.

Other comments:

p. 79, Section 216 states; *“At present, most water consumers in New Zealand have limited recourse to dispute resolution with water providers. This is because a majority of water consumers receive their three waters services on a statutory basis from local authorities, rather than on a contractual basis. While consumers have some ability to raise service provision concerns with democratically elected councillors, and also with the Ombudsman who is able to deal with complaints about Local government agencies, both these options have a limited time/resource to deal with consumer complaints about the delivery water services.”*

We consider this ability for community members and communities to hold Councils to account will be lost in the new entities. We also think the reference to ‘some’ ability to raise service provisions significantly understates that current situation. Councils are well connected and responsive to their communities.

p. 79, Section 217 states; *“The Water Services Bill creates a backstop consumer complaints framework designed to ensure that consumer concerns about drinking water are properly investigated by suppliers. Drinking water suppliers are obligated to establish and maintain a consumer complaints process, and report annually to Taumata Arowai on that process.”*

Agree, this is necessary.

34

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

Response:

Yes, we support this, it will be essential. It needs to be focused on being accessible to all

community members and communities. If the Commerce Commission is being considered, it should follow these principles that are already mandated.

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?***

Response:

We agree the kinds of disputes listed in point 228 should be included. We do however note that this is very narrow and should be expanded on significantly to cover the types of issues that arise with all three water services. These would include levels of service such as resolution of drainage and flooding of issues; though there is no need to limit the scope of disputes. The legislation/regulation should also define the scope of the consumer dispute resolution provider by reference to the parties rather than to the dispute subject matter.

There needs to be clear avenues for urban developers who would work with Council to resolve resource planning and water connection issues. This suggests that there will need to be a three-way contract between the private developer, the Council and the WSE. There needs to be mechanisms made available so that any deadlock can be resolved.

It appears that this topic has been missed all together and has had limited consideration with no exposure documents to date outlining how developers will be catered for and how their appeals process will be dealt with.

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

Response:

We consider that a mandatory statutory consumer disputes resolution scheme should be established, all WSE should be subject to this and consumers should have free access to raise disputes. The service could be paid for by the entities in addition to having an in-house disputes/customer complaints team. We do note that ultimately the costs will be borne by the community. Any issues unable to be resolved by the entities could be referred within mandated timeframes/deadlines to avoid on-going disputes. We also consider that Councils should have the ability to have an influence on outcomes and in representing communities or individual community members in this process.

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?***

Response:

We consider that Councils should have an active role in this as both the asset owners and community representatives.

This needs a formal assessment of options and assessment of the capability of existing services. It does not appear from reading this discussion paper that there is enough information to reach a conclusion on this. We do acknowledge that a single point of contact is useful here. In other words, adding to the jurisdiction of existing DRs would allow this new service to piggyback on their existing recognition. Existing DRs also have considerable

expertise and experience in resolving consumer disputes. There may be value in taking advantage of that as the system gets established.

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?***

Response:

Initially we can see the benefits for the large entities only. Smaller schemes should have less need as they have a clearer line of sight and connection with the scheme they are served by. This could be reviewed in the future.

This should cover all three waters services, not just water suppliers.

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

Response:

We consider this to be appropriate.

This should cover all three waters services, not just water suppliers.

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?***

Response:

We support special considerations for vulnerable communities.

We would like to take this opportunity to remind the Government of the historical scheme that existed prior to 2000, where Government supported smaller communities in their development of three waters infrastructure. Removal of this fund has significantly impacted the ability of these smaller at risk communities to provide the appropriate level of service. Removing the grant also removed the affordability factor for these smaller communities. We would support a proposal of this nature, however should the four WSE proposal go ahead advocates should be available at the cost of the WSE. The service should be run in a way that does not need experts representing the applicant. Councils could be involved in this and should have some authority in the process.

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?***

Response:

Yes, should be transparent (for example, shown on three waters bill).

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?

Response:

The methodology and cost regardless should be transparent and made available to the suppliers for consideration. The decision of the levy should be independent of the supplier and determined by the regulator. Ministers shouldn't be involved in such matters, this is a role of the regulator.

43

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

Response:

Councils should have a say in how the levy regime is established and operated. Given we consider Councils should be involved in this process, we also consider that the funding of Council activities in this service should be provided to Councils.

Other comments:

p. 89, Section 253 includes Table 11. We have added the highlighted bullet points.

AGENCIES WITH POLICY OR STEWARDSHIP RESPONSIBILITIES	AGENCIES WITH REGULATORY RESPONSIBILITIES	ENTITIES WITH IMPLEMENTATION OR SERVICE DELIVERY
<ul style="list-style-type: none"> Ministry of Health (public health regulation) Ministry for the Environment (environmental regulation) Ministry of Business, Innovation and Employment (economic and consumer protection regulation) Department of Internal Affairs (lead agency for Water Services Bill and Water Services Entities Bill) Councils – Owner/Council representation 	<ul style="list-style-type: none"> Taumata Arowai Regional councils Economic regulator Consumer protection regulator Consumer dispute resolution schemes City & District Council <ul style="list-style-type: none"> Building Act RMA, LGA Drainage Act District Plan Annual Plan/Long Term Plan 30 year Infrastructure Strategy 	<ul style="list-style-type: none"> National Transition Unit Four Water Services Entities Community/private schemes Self-suppliers City & District Council <ul style="list-style-type: none"> Rural drainage Roading Growth & development planning Regional Council <ul style="list-style-type: none"> Flood protection Fresh water outcomes

What about Councils as;

- Owners of the assets
- Community representatives
- Significant drivers and governors of communities
- Partners in servicing communities
- Important to have integrated functions, services and growth

p. 90, Section 256 states; *“Coordination across drinking water, environmental, economic, and consumer protection regulation will be essential for the delivery of high quality outcomes. For example, both Taumata Arowai, the economic regulator, and the consumer protection regulator will have responsibility for different aspects of the quality of water services received by consumers.”*

There should be reference to Councils three waters, integrated with services Council provides including;

- Rural drainage
- Rooding
- Growth & development
- Coordination of all of the above

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?***

Response:

No. We consider that communities will not be best served by the proposed model. The system proposed will go some way to addressing the concerns of Councils. However by mandating the four WSE model other alternatives which better serve communities have not been considered. A particular concern is that Councils should be involved in terms of coordination on key strategic directions, access to services, growth, etc. The discussion document does not clearly indicate how the voice of communities will be heard and does not provide strong connections between infrastructure planning and spatial planning at the regional and local level.

Providing an opportunity to hear the local voice of communities will be essential, as well as recognition of the long term thirty-year viewpoint. This also needs to be done in partnership with Councils.

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?***

Response:

No. The government role is to get its requirements into legislation or regulation. It shouldn't add a further instrument in the form of a GPS. The particular disadvantage of a GPS is that it is inherently political. It directly involves the government in the regulatory process. That brings the possibility of further cost and delay if not litigation.

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?***

Response:

Agree with serious reservations. Individual privacy should always be a significant consideration. It should be proactive and be cohesive and consider trade-offs, giving consideration to each other's functions. However the protection of individuals and communities rights should be well considered. There should be controls and safeguards to achieve this.

However we also consider that Councils must have this ability. Entities must work within the larger community visions so that there is no disconnect between the community and the services that are being provided is there currently with other utilities.

Other comments

p.13, Section 13 states; *“Consumers should be paramount”*.

Which consumer is this referring to; the individual today of Community in the future? We think there is a need for the discussion document to consider this and give a clear explanation of who the consumer is. Our view is that the term consumer is very narrow and does not reflect the communities serviced by three waters which cover the individual today right through to future generations and the whole community.

p. 18, Section 31 states; *“Compliance costs incurred by regulated suppliers are more difficult to quantify as they tend to spread across suppliers’ cost bases as a general cost of delivering services to consumers. As such, it is likely that they are met by some combination of the supplier’s shareholders and consumers. The fact that consumers end up bearing a significant portion of the costs of any economic regulation regime means that care is required to ensure that any economic regulation regime is designed in a way that provides net benefits to consumers.”*

Compliance costs need to be a significant consideration. We consider that the economic regulator should be proactive in understanding the extent of costs and the trade offs that will be required in achieving desired outcomes, prioritising and the costs involved. Council should be a central part of this assessment and trade off as they are asset owners and democratically elected representatives of their communities.

p. 18, Section 32 states; *“While the New Zealand three waters sector has strong natural monopoly characteristics, it has not been subject to economic regulation to date. This is likely because attempting to regulate a three waters sector involving 67 councils would be more likely to delivery net costs rather than net benefits to consumers, and society more generally.”*

Despite no economic regulator, Councils have been close to and held to account by ratepayers through direct engagement, access to Elected Members and Special Consultative Procedure requirements under the Local Government Act 2002. Councils are very concerned that large monopoly entities that they have no control over will not always act in the best interests of our community. We therefore strongly support economic and consumer protection regulation, with a stages introduction preferably.

p. 19, Sections 33 & 34. We do not agree that this is an accurate reflection.

In relation to Section 33 we would like to ask, where has this been the case? Funding for Three Waters is ring fenced by Councils. The new Water Services Entities are going to be burdened by Debt from non-Three Waters expenditure proposed by the Government (Reform funding for Councils including “no worse off” and “better off” components) from day one.

p. 19, Section 35 states; *“While the scale of the four Water Services Entities should significantly increase their likelihood of delivering these objectives, there is a flip-side risk that the entities become less responsive to consumer and community needs as a result of*

their increased scale and expanding range of stakeholders. The Government is alert to this risk and has proposed a range of governance and consumer voice protections to mitigate the risk. However, economic regulation provides a strong and complementary regulatory backstop.”

We do not believe that the scale of the Water Services Entities would increase the likelihood of delivering objectives, however we do strongly agree with the flip-side risk mentioned in section 35, where entities becomes less responsive.

p. 19, Section 36. We agree with the conclusion made here, particularly if water services taken from the Councils by the Government are moved into large entities.
