

## Upper Hutt City Council's submission regarding the proposed Water Services Economic Regulation and Consumer Protection Bill

On behalf of Upper Hutt City Council (UHCC), please see our submission regarding the proposed Water Services Economic Regulation and Consumer Protection Bill.

### Who we are

Upper Hutt City Council is responsible for the largest geographical district in the Greater Wellington region. The district provides a significant proportion of the fresh water that supplies the region, both as a catchment area and source, and much of the water storage, treatment and distribution infrastructure.

Te Awa Kairangi (the Hutt River) and its tributaries catch and transport the largest single volume of stormwater in the Wellington region, and provide recreation for many residents and visitors to the region.

Our Sustainability Strategy 2020 includes the goal to 'have good quality and sufficient water supply'.

### Introduction

This submission focuses on the following aspects of the Bill, namely:

- Our overall position regarding economic regulation and the proposed approach
- Broader outcomes to reflect community and environmental benefits
- Amending the purpose statement of the bill
- Giving effect to Te Tiriti o Waitangi and the principles and outcomes sought through Te Mana o te Wai
- Appropriate definition and consideration of the range of water services customers
- Capability and timing implications of the proposed economic regulation

### Submission comments

1. We remain concerned that the magnitude and number of reforms is stretching the capability and capacity of both central and local government. There is a real risk that this might lead to rushed, compartmentalised decision-making, without comprehensive consideration of the consequences for councils and the varied communities we serve.
2. The sequencing of reforms is a key concern to us, and UHCC strongly advocates that the Future of Local Government Reform should be completed first, as only then can we fully understand the context that the Three Water Reforms will be nested in.

3. The timeline for standing-up the new entities to be operational by 1 July 2024 is unrealistic, given the scope and magnitude of the programme, and UHCC believes it should therefore be delayed by at least 12 months.
4. We submit that our concern regarding sequencing and timing of the reform is supported by the lessons learnt from reforms in Australia as was explored through the Local Government New Zealand investigative work on alternatives undertaken in the early stages of the reform.

### **SUPPORT FOR ECONOMIC REGULATION**

5. The Council supports the need for economic regulation and consumer protection as part of the Government's wider three waters reforms.
6. We consider that the economic regulator has an important role to help reassure consumers that there has been proper scrutiny of costs for water services through the range of controls set out in our submission. We are supportive of a range of economic regulation for water, including: information disclosure, price-quality, pricing, consumer protection and dispute resolution.
7. The Wellington region councils previously made submissions to MBIE as part of the policy development process for this Bill and we would refer you to our full submission available [here](#).
8. We see that economic regulation and consumer protection as a part of the future legislative framework and in relation to the operating requirements of the proposed Water Services Entities (WSE) are important to ensure:
  - a. fair and transparent pricing
  - b. incentivisation and transparency of performance
  - c. increased efficiencies, over time
  - d. an investment pathway for addressing long-term issues (rather than ad-hoc and reactive decision making)
  - e. consumers have clear channels for raising issues and can have confidence in fairness of pricing
  - f. effective resolution of disputes.

### **INTEGRATED AND BESPOKE APPROACH**

9. Economic regulation for water must be carefully designed as part of the wider three waters reforms and ensure a bespoke approach that balances economic efficiency with broader outcomes.
10. Economic regulation for water will require a different approach to that seen in other regulated sectors. The three waters are inherently more complex than those utilities currently regulated by the Commerce Commission. This includes how economic regulation for three waters relates to:
  - a. the wider design of legislation and system stewardship arrangements
  - b. representation and governance
  - c. planning integration processes
  - d. how economic regulation works with the other water regulators to give economic effect to their requirements; and

e. transition processes and timing.

11. Reasons for this complexity include:

- a. The WSEs differ from the other regulated monopolies in their degree of vertical integration and complexity – spanning from bulk water supply, to reticulation, servicing households and businesses across three waters, and the billing and customer relationship with end users. They must also grapple with security and scarcity constraints.
- b. The WSE will offer a fully integrated service – collection, treatment and distribution of three waters. There's no separate retail layer (as in electricity, gas and telecommunications), so the firms will have to manage billing, revenue assurance, infrastructure planning and investment.
- c. The WSE will be subject to Government stewardship arrangements, including a Government Policy Statement.
- d. The WSEs will be bigger (by value) than any network the Commerce Commission currently regulates, and this will only grow based on the renewal, growth, service improvement and climate change adaptation investment anticipated. Investment will include significant CAPEX programmes across multiple projects in each WSE.
- e. Economic regulation for water will be closely interlinked with wider regulation and governance / representation. Roles, responsibilities and decision-making accountabilities need to be clear.
- f. In addition to economic regulation, WSE will be regulated by Taumata Arowai and by environmental planning controls (primarily through regional councils). These will directly drive investment requirements. Economic regulation needs to accommodate other regulatory requirements and how these will impact on costs, quality and management practices.
- g. Water is essential for the well-being of people. Water services cannot simply be disconnected if there are issues of non-payment or debt. This includes statutory requirements under the Health Act as amended through the proposed Water Services Legislation Bill.

**SUPPORT FOR POLICY DIRECTION**

12. On this basis, we are support of some of the key policy settings of the Bill in that:

- a. Economic regulation focuses on the four proposed WSE, rather than other smaller rural and community-based providers and schemes. This is to ensure that the regulation model focuses on where it can have the greatest benefit, is cost effective and can be effectively resourced. We are also supportive that economic regulation will apply to all three waters
- b. The Bill allows for flexibility and different approaches to regulating entities, such as Entity A, and services, such as stormwater;
- c. Information disclosure regulation and quality-only regulation should apply in the first regulatory period and subject to flexibility on implication dates that information disclosure regulation and price-quality regulation will apply in the second regulatory period. A flexible approach is critical to enable development of the information and capability requirements
- d. The Commerce Commission be required to set and enforce minimum service level codes
- e. A consumer dispute resolution scheme be established for the three waters sector, as well as other measures to strengthen the consumer voice;

- f. A position of a Water Commissioner, or similar, be established on the Commerce Commission board

### **Amendments required to the Bill**

13. While we are generally supportive that the Bill does set out a water focused approach to economic regulation, we are concerned that the legislation, as drafted, does not sufficiently deal with a number of matters. On this basis, we submit the following points.

### **BROADER OUTCOMES**

14. Economic regulation needs to be fully integrated and aligned with the design and policy decisions of the water reforms. Particular attention needs to be given to the wider community benefits and environmental outcomes expected.
15. In addition to efficiency, investment by the WSE must also balance meeting regulatory requirements and delivery of broader social, cultural and environmental outcomes. There needs to be more recognition of climate change, resilience and the costs and service levels that this will require. There are also cost and service level implications for meeting specific environmental and social expectations. e.g. how wastewater is treated and how drinking water is disinfected. The new freshwater regulations will also require significant investment into wastewater treatment and retention ponds.
16. Such considerations are outside of a focus on efficiency and need to include thinking around resilience, (increased stormwater capacity, redundancy of pipe networks e.g. duplicated mains, wastewater sumps for overflows, and bigger water storage). Such matters will need to be factored into any price / quality regulations.
17. As drafted, the Bill does not sufficiently recognise the wider range of outcomes that are enabled by investment in three waters and there is a risk that a focus on cost and price will override the ability of the WSE to also invest to enable community outcomes or growth.
18. These broader outcomes need to be better reflected in the Bill, including in Part 1 clauses 3-6.

### **PURPOSE OF THE BILL**

19. While we are generally supportive of the clause 12 purpose statement, we are concerned that it may be too narrow to cover all the relevant characteristics and outcomes enabled by WSE services. These include a range of environmental, economic and social outcomes which are delivered to both connected customers and broader communities.
20. We submit that a modified version of the purpose statement should be developed, which balances a workably competitive market (and understood outcomes of innovation, investment, efficiency, quality, prices, and profit), with community and environmental outcomes, and the principles of Te Mana o te Wai.
21. We think WSEs should have three complementary objective statements, aligned with the statutory objectives of the WSE (this may require amendments to the Water Services Entities Bill). The three objectives would be:
  - a. Outcomes for consumers consistent with workably competitive markets and relevant to services provided to connected parties.
  - b. Outcomes for communities and the environment consistent with a well performing local authority. This part of the objective statement could borrow from s14 of the Local Government Act 2002, and most of the matters there are relevant to the provision of public or quasi-public services.

- c. Outcomes consistent with Te Mana o te Wai. The part of the objective statement could borrow from section 3.2 of the National Policy Statement for Freshwater Management 2020.

## **TE TIRITI AND TE MANA O TE WAI**

- 22. Economic regulation will also need to consider how to give effect to the principles of Te Tiriti o Waitangi. This includes recognition of co-governance of the WSE and how economic regulation reflects and recognises the principles and outcomes sought through Te Mana o te Wai which puts the health of a waterbody first, human health needs second, followed by recreational, economic and other needs.
- 23. We recommend that further consideration is given as to whether the Bill sufficiently considers how economic regulation can give effect to Te Tiriti o Waitangi and the principles and outcomes sought through Te Mana o te Wai. This may require a specific statutory objective or changes to clauses 6 and 12.

## **CONSUMERS**

- 24. The Bill does not adequately identify the range of consumers, services provided to each consumer group, and whether these services are supplied by a WSE or another body. This may require amendments to clause 7 or a new section.
- 25. Consumers will include a wide range of users:
  - a. households
  - b. schools, hospitals and other social / community institutions
  - c. Iwi / Māori
  - d. local and regional councils
  - e. land and property developers
  - f. a range of corporate and commercial users, including very large industrial consumers
  - g. rural consumers
  - h. vulnerable consumers
  - i. private and community water schemes and self-suppliers
- 26. Defining what is meant by a consumer and understanding the range and variability of water consumers will be critical to successfully developing a regulatory framework that advances the long-term interests of consumers. We recommend that further consideration and focus is given to defining consumer groups, services, and the role and statutory powers of WSE and economic regulation in relation to each group.
- 27. Vulnerable customers are of particular concern to Council. Water services cannot simply be disconnected if there are issues of non-payment or debt. The WSEs have statutory requirements under the Health Act and we recommend this aspect needs to be reflected in this bill to ensure appropriate consumer protections are in place.

## **CAPABILITY AND TIMING**

- 28. Timing and enabling flexibility in the implementation approach are critical to support the development of the required capacity and capability of WSEs to meet economic regulation requirements.

29. Water reforms will take time to embed and mature. In this environment, it will be vital that economic regulation plays a constructive and proactive role to support and work with WSE and Taumata Arowai to meet bottom lines and regulatory requirements.
30. Economic regulation also places a lot of demands on an organisation in terms of reporting and long-range planning. We therefore consider that it will be important to take a transitional approach to economic regulation while also ensuring that the pathway is clear and achievable so that this can be planned for and resourced.
31. The Bill appears to be based on existing regulatory 'propose and respond' dynamic, where suppliers develop investment plans for scrutiny and approval by the regulator. This approach requires a degree of sector maturity. Establishment and transition will require a learning culture and an approach based on sharing of lessons and raising sector capability.
32. We are supportive of the flexible approach to types of economic regulation and the regulatory periods but there is a risk that the proposed regulation approaches and regulatory periods cannot be met and become a distraction from the core delivery of the WSE.
33. To mitigate these concerns we submit that the Bill needs to enable a stronger focus on the capability, culture and behaviours to ensure economic regulation plays a constructive and proactive role to support and work with WSE and Taumata Arowai to meet bottom lines and regulatory requirements.
34. Setting the optimal planning horizon and cycles are critical to ensure longer term innovation and investment planning to address complex issues. Regulatory periods ideally need to align with broader spatial and investment planning by local government. The timing and alignment of these cycles will require further consideration through the Resource Management Act reforms and review local government processes. This is currently unclear.

#### **Closing statement**

In conclusion, Upper Hutt City Council maintains that central government should reconsider provisions in this Bill, and that the implementation of any solution should be delayed to allow time for a "right first time" solution to be rolled out, rather than rushing through what will be a major and generational change for all New Zealanders.

UHCC entered the Three Waters Reform Programme in good faith, and hopes that central government will continue in the same vein to explore what is best for people in all of the four community well-beings and not just for the economics and ideology of the case.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Wayne Guppy', written in a cursive style.

Wayne Guppy  
**Mayor, Upper Hutt City Council**