Chapter 8 – Water Services Entities Implementation Arrangements

Coversheet: Decisions on implementation arrangements that will ensure the new water services entities are equipped to begin operations by 1 July 2024.

Advising agencies	Department of Internal Affairs
Decision sought	Policy decisions on the implementation arrangements that will ensure that the new water services entities for the delivery of three waters services will be equipped to begin operations by 1 July 2024.
Proposing Ministers	Minister of Local Government
Date finalised	23 May 2022

Overview of this Regulatory Impact Assessment

Cabinet considered policy options to reform three waters service delivery in mid-June 2021. A Regulatory Impact Assessment (RIA) informed the decision on whether and how to improve the system for delivering three waters services. It comprised:

- A Strategic RIA assessing the rational for reform; and
- Seven detailed analyses (chapters) of each of the core design choices the Government needs to make to ensure the package of policy proposals delivers the intended outcomes.

Chapter 7 of the RIA covered the overall approach to managing the transition and implementation. This chapter (chapter 8) adds to the RIA with a focus on the policy decisions for implementation arrangements to ensure the water services entities have all the necessary functions, powers, and duties to undertake their statutory obligations.

Chapter 8: Implementation Arrangements, includes the following sections:

- Part A: Pricing and charging by the water services entities
- Part B: Land access provisions
- Part C: Stormwater management responsibilities

  Part D: Replacing local authority bylaws and enforcement provisions

The Department is solely responsible for the analysis and advice set out in this RIA, except as otherwise explicitly indicated.

Quality Assurance Reviewing Agency

The Department of Internal Affairs' Regulatory Impact Analysis (RIA) panel (the panel) has reviewed Chapter 8 – Water Services Entities Implementation Arrangements RIA (RIA) in accordance with the quality assurance criteria set out in the CabGuide.

Quality Assurance Assessment

The panel considers that the information and analysis summarised in the RIA *meets* the quality assurance criteria.

Reviewer Comments and recommendations
This RIA is an additional chapter to the substantial RIA prepared in May 2021 to support policy decisions on the reform of three waters service delivery arrangements and should be read in that context. This additional impact analysis is a complex RIA which addresses a number of disparate decisions needed to implement those decisions already made to reform water service delivery. Overall, the RIA does a good job of addressing the range of discrete issues, which are generally well explained. Mostly, constraints on the analysis are clearly set out. There remains a significant amount of work to be done through the transition to achieve smooth implementation of the reforms and to better understand the impact of changes on service delivery, including where detailed current information is not always readily available. In particular, this applies to the uncertain impacts of potential changes to pricing on households, including those that could experience difficulty paying their water bills.
Responsible Manager (Signature):
 Michael Mills, Acting Director, Policy and Stewardship

The scope and contents of this chapter

1. This chapter focuses on policy decisions for implementation arrangements to ensure the water services entities have the necessary functions, powers, and duties to undertake their statutory obligations.
2. It is in addition to the original Regulatory Impact Assessment (RIA), which supported Cabinet decisions to reform the delivery of water services in New Zealand, and an additional Chapter 7, which supported decisions related to transition.
3. The options within this additional chapter (Chapter 8), only happen within the context of the reform programme as a whole. As a result, they are not compared against the current status quo (where drinking water, wastewater, and stormwater services are delivered by 67 territorial authorities), but against a modified status quo (where three waters services are delivered by four water services entities). As Cabinet has already made the significant decision to reform how these services are delivered, considering options within the current status quo are out of scope of this RIA.
4. The Government has also outlined several key bottom-lines in relation to three waters reform, such as giving effect to Te Mana o te Wai, balance sheet separation, and keeping assets in public ownership. Analysis has been done within the context of these bottom lines.

Overview

Reform objectives and policy proposals have already been agreed for the overall design of the new service delivery system and transition approach

5. As noted in the Strategic RIA, the Government's policy objectives for reform are to significantly improve the safety, quality, resilience, accessibility, and performance of three waters services, in a way that is efficient and affordable for New Zealanders and upholds the interests of iwi/Māori.
6. In June, July, and October 2021, Cabinet made a series of decisions to transform the three waters delivery system, including agreeing to the overall design and core components of the new service delivery model, and approach to transition. This involves the creation of four statutory, publicly owned water services entities, which will take over responsibilities for service delivery and infrastructure from local authorities from 1 July 2024.
7. Further decisions were made in April 2022, to strengthen the proposed approach to ownership, governance, and accountability arrangements – in response to the recommendations made by the Working Group on Representation, Governance and Accountability.
8. These decisions are to be given effect through an initial piece of legislation – the Water Services Entities Bill.
9. To manage the transition and implementation, Cabinet agreed to establish a National Transition Unit (NTU) within the Department of Internal Affairs, together with four 'establishment entities' that will go on to become functional water services entities. The NTU and establishment entities, working together with iwi/Māori and local authorities, will assist with coordinating the transfer of drinking water, wastewater, and stormwater assets, liabilities, and interests from local government organisations to

the new water services entities, along with the transfer of relevant local government functions.

Further policy decisions and legislation are needed to fully operationalise the water services entities and implement the reform

10. A second piece of legislation – the Water Services Entities Amendment Bill (the Amendment Bill) will be required to establish the detailed provisions required for entities to operate by 1 July 2024. It is intended this Bill will cover the transfer of assets and liabilities to the entities, and provide the entities with their functions, duties, and powers.

11. The Amendment Bill will also need to remove, transfer, or replicate most of the responsibilities from the Local Governments Acts of 1974 and 2002 related to water services operations. Local authorities may still have some residual responsibilities, though. For example, Cabinet has agreed local authorities will retain the infrastructure and management responsibilities for stormwater systems that form part of roads, in their capacity as road controlling authorities [CAB-21-MIN-0226].

12. In addition, parts of the Local Government Act 1974 that relate to land drainage are outside of the scope of the functions that will transfer to the water services entities. However, it may be necessary to make consequential amendments in places to clarify the linkages between the water services entities and local authorities' roles, and to modernise terminology.

Some Cabinet decisions will be technical, operational detail, building on earlier decisions

13. Many provisions in the Amendment Bill will be largely technical entity and system design details that build on earlier policy decisions and the enabling transfer provisions of the Water Services Entities Bill. Such matters include arrangements for the transfer of assets, liabilities, and interests; service provider obligations; financing arrangements; as well as the consequential amendments to the Local Government Acts and related legislation in respect of three waters services.

However, some operational decisions will require policy judgements and these decisions are considered in this RIA Chapter

14. The policy decisions we consider in this chapter are the significant implementation issues where a straight transfer of the local government model is not fit for purpose and/or where implementation presents additional complexity due to the bespoke nature of the new three waters system, which combines public ownership with operational and financial independence.

15. A further consideration for which operational policy issues to include in this RIA is the objective of ensuring a smooth transition of the service delivery reforms, to minimise disruption to communities and consumers. In transferring functions and powers there will be particular transition risks that need to be managed, for example managing the rate of change in prices.

16. This chapter provides a regulatory impact assessment for the following policy issues and decisions:

PART A	Pricing and charging by the water services entities	
	- Price setting and charging processes	(from paragraph 34)
	- Protections for vulnerable consumers	(from paragraph 77)
	- Stormwater pricing and charging	(from paragraph 148)
	- Growth infrastructure charging	(from paragraph 168)
PART B	Land access provisions	(from paragraph 199)
PART C	Stormwater management responsibilities	(from paragraph 218)
PART D	Replacing local authority bylaws and enforcement provisions	(from paragraph 248)

17. While seemingly disjointed, these specific items are issues which have not previously been considered by Cabinet in detail but are of a significant nature and are therefore required to be supported by a regulatory impact assessment.

18. Our recommended proposals are summarised at the conclusion of this chapter from paragraph 347.

Key limitations or constraints on analysis

19. A key constraint on the pricing and charging policy work has been a lack of a full data set on the current pricing and charging practices of local government. We also had almost no data on the actual bills faced by consumers or data on how often volumetric charges are passed on to tenants.

20. Part D deals with proposals to replace local authority bylaws for the regulation of three waters customers and third parties. To inform this analysis we have reviewed a sample of three waters bylaws and general bylaws that include three waters content, from a range of territorial authorities of varying sizes. We also reviewed the legislation that empowers the making of three waters bylaws. As three waters services are currently provided by 67 territorial authorities, we have not exhaustively reviewed the contents of all relevant bylaws. Our focus has been on identifying key themes and significant issues regulated by bylaws that will need to be dealt with under the new service delivery arrangements to ensure the outcomes of the reforms are achieved.

PART A: PRICING AND CHARGING BY THE WATER SERVICES ENTITIES

Context

21. With the Cabinet decision to establish water services entities to provide three waters services, we now need implementation decisions on pricing and charging arrangements for the new water services entities.

22. Pricing refers to the setting of tariffs for water services; these are expected to reflect the underlying costs of developing and maintaining water networks and delivering services. Charging refers to the billing process; who gets billed and how, as well as the tariff (charge) that is billed.

23. Currently most territorial authorities do not have clear or transparent price setting processes or methodologies for their water services. Pricing and charging for water

services are often bundled with other services. Territorial authorities currently charge for three waters through various charging mechanisms (general and targeted rates, volumetric charges, connection charges and other fees, and development contributions) applied in different ways by different councils. All current charging either occurs under the Local Government (Rating) Act 2002, which provides for all charges except development contributions, or the Local Government Act 2002 which provides for development contributions. As water services entities will not be local government bodies, they will not be able to use the existing legislation to charge for three waters services (unless that was expressly provided for).

24. Transitioning to service delivery by the new entities will require a shift away from the use of rates and other local government funding instruments. Cabinet has not made any significant decisions yet about pricing and charging except that the first Water Services Entities Bill contains provisions requiring that water services entities produce a funding and pricing plan and sets out the process for developing the plan. Cabinet has agreed the entities will ultimately decide on prices, within the framework of their various statutory, regulatory, and accountability obligations.

25. The pricing and charging decisions set our here will take place in the context of the economic regulation of water services entities being proposed in an associated paper by the Minister of Commerce and Consumer Affairs. The overall system of economic regulation, pricing, and consumer protection for water services entities will be considered together by Cabinet. Once fully implemented, the economic regulation system is expected to create a revenue cap to set overall limits on the revenue that can be raised through service charges.

26. A further component of the three waters system agreed in June 2021 is a Government policy statement (GPS) on water services [CAB-21-MIN-0226]. This is provided for in the Water Services Entities Bill and is a mechanism intended to provide national strategic direction to the water services entities. A water services entity must give effect to the statement when performing its functions. The GPS is a potential alternative or additional mechanism for signalling specific pricing objectives.

27. This discussion covers the pricing and charging of three waters services. The pricing of water services has no implications for the ownership of the actual water being delivered or removed. This is clarified in the Water Services Entities Bill.

28. Cabinet is likely to decide that existing arrangements for who pays for water services will remain in place: property owners are liable to pay the bill but can pass on volumetric charges to domestic tenants.

Pricing and charging objectives

29. In the 18 October 2021 Cabinet paper on further decisions on three waters [CAB-21-MIN-0419 refers] a range of pricing outcomes were set out but not explicitly agreed by Cabinet. We propose refining those outcomes into a set of pricing objectives.

30. The proposed pricing objectives are:

    - Economic efficiency: prices reflect the underlying costs of services and support the financial sustainability of water services entities.
    - Affordability: water is an essential service and people on reticulated networks should be able to access water services regardless of their ability to pay for them.

- Price stability: the rates of change in prices are not too high and price changes are clearly signalled in advanced.
- Cost-sharing: a key driver of the reforms is to address affordability issues, particularly for customers in smaller communities. Entities could use geographic average pricing to smooth costs across communities, thereby ensuring more affordable services for all.
- Horizontal equity: consumers in similar positions pay similar prices.
- Inter-generational equity: every generation (which can be thought of as being as small as the annual cohort of ratepayers) should be paying its fair share for assets and not requiring future generations to pay substantially more or less than their fair share through either over or under-investment.
- Giving effect to Te Mana o te Wai and the principles of Te Tiriti o Waitangi: pricing can support Te Mana o te Wai by encouraging efficient usage of water. Pricing can also engage Article 3 of the Treaty and support equitable water service access and provisions for Māori.
- Consistency with other government goals: pricing issues should support, or at least not undermine, government goals in other domains. For example, growth charges can have an impact on housing goals. Water service pricing can influence levels of water use which affects climate change goals, including resilience and adaptation.

31. Not all these objectives will be reflected directly in legislation and different policy tools will be used for different objectives. At times, it will be possible for there to be trade-offs between these different objectives that can manifest in conflicts between different policy tools.

32. These pricing objectives have helped inform the identification and analysis of pricing and charging transition issues. The intention is that the full package of pricing and charging proposals will meet these objectives.

33. The regulatory impact assessment for pricing and charging by the water services entities addresses, in order, the following issues and proposals:

- Part A (1) price setting and charging processes for water services;
- Part A (2) protections for vulnerable consumers;
- Part A (3) stormwater pricing and charging;
- Part A (4) growth infrastructure charging.

PART A (1) – PRICE SETTING AND CHARGING PROCESSES

Problem definition

34. With the transfer of water services delivery from territorial authorities to water services entities, Cabinet has already agreed that water services entities will be statutorily empowered to set prices and charge for water services.

35. Cabinet has also agreed that legislation will require water services entities to present a funding and pricing plan to the Regional Representatives Group at least once every three years, and that the water services entity must engage with consumers and communities on the plan.

36. Once removed from local government legislation, without any interventions, there will be no authority or constraints on the pricing and charging behaviour of water services entities beyond standard commercial law.

37. Policy decisions are now required on what additional specific matters are to be included in legislation to enable and constrain pricing and charging, with other pricing and charging matters left to be resolved through non-statutory means, including the Government policy statement on water services, or the entities themselves. These matters include:

    - setting out charges in an annual tariff list;
    - embedding pricing principles and rules to guide tariff setting;
    - empowering the economic regulator to be able to use a range of tools to support water services entities to implement the pricing principles and rules;
    - geographic price averaging and community affordability;
    - managing the rate of increase in prices for the first few years of water services entity operation until the full implementation of economic regulation;
    - removing existing cross-subsidies.

Objectives

38. In considering how to enable and constrain these pricing and charging matters, our objectives are to:

    - provide certainty and clarity, particularly for consumers – this is a critical objective for supporting a smooth transition;
    - give effect to one or more of the pricing objectives;
    - provide flexibility – this objective would enable adaptive pricing and charging, seen as important in supporting the operational and financial independence of the water services entities.

Options and criteria

39. The two options considered are:

    Option 1 – Include price setting and charging processes in statute, either as a requirement, or as an enabling provision but not a requirement.

    Option 2 – Leave to non-statutory mechanisms.

40. Option 2 is a counterfactual option, that is, if no decision is made to specify a provision in statute, then non-statutory provisions are available. The options are not necessarily

mutually exclusive; non-statutory mechanisms can support statutory approaches, for instance through the Government policy statement.

41. The criteria used to assess these options was consideration of whether the options would achieve the objectives set out above.

Options analysis

42. The following analysis considers each of the matters identified in paragraph 37 in terms of the criteria. A summary assessment is provided in Table 1, paragraph 74.

43. Issue: Setting out charges in an annual tariff list – The switch from local authority general rating to service-related pricing for water services is a significant change for most consumers. Some certainty and clarity for consumers will be provided by the already mandated three-year funding and pricing plan. Publication of an annual tariff list that includes charges for drinking water, wastewater, trade waste, stormwater, growth, connections, and other miscellaneous services will further increase the certainty and clarity for consumers. This is important for supporting a smooth transition, particularly given the reform expectation that price setting follow an open and transparent process.

44. The entities are likely to put more weight on price setting flexibility. Taking this into account we considered a 'softer' statutory option of requiring pricing information disclosure but not specifying its nature (which could be managed by the economic regulator). On balance, however, we concluded that neither the counterfactual or this variation would give the desired level of certainty and clarity for consumers.

45. *Recommended option* – We recommend a statutory requirement that all water services entity charges will be set out annually with the publication of a detailed tariff list.

46. Issue: pricing principles and rules to guide tariff setting – Pricing principles and rules will provide clear and enduring parameters to water services entities and the economic regulator that need to be taken account of in the development of pricing plans and tariffs. They will be substantial markers of reform intentions for pricing and will support both a smooth transition and long-run achievement of desired pricing objectives. For example, tariffs should reflect full cost recovery and be non-discriminatory. Proposed pricing principles are set out in Appendix A[1] and proposed rules are discussed in the section on vulnerable consumers.

47. We concluded that the counterfactual option (the most likely instrument being inclusion in a Government policy statement) would not provide the desired enduring certainty and clarity.

48. To provide additional certainty and clarity we also propose that the legislation include a statement on measures to manage any conflicts between pricing principles and rules. This will include powers for the economic regulator, discussed below.

49. *Recommended option* – We recommend principles and rules to guide tariff setting be included in legislation.

[1] In summary these principles are: simplicity, non-discriminatory, full cost recovery, and resource efficiency.

50. Issue: powers of the economic regulator[2] in the price setting process – The role and powers of the economic regulator in the price setting process needs to be clear and certain for all stakeholders. The proposed powers are to provide guidance and, if necessary, produce input methodologies and determinations[3] on the implementation of pricing rules and principles. The powers of the economic regulator will be critical in supporting both a smooth transition and long-run achievement of pricing objectives, especially in the context of monopoly provision of services that are largely non-discretionary (in other words 'necessary for life').

51. Considering the counterfactual, we concluded that effectively relying solely on existing provisions in the Commerce Act 1986 and Consumer Guarantees Act 1993 would leave consumers and entities with insufficient certainty that their interests would be fairly recognised in a unique 'market' context, and therefore needed to be separately recognised with specific legislation.

52. The regulator can be enabled to use a number of instruments, including issuing guidance, input methodologies and/or determinations to entities on how to implement the pricing principles and rules. Leaving the choice of instruments to regulator discretion would provide a degree of flexibility.

53. Some flexibility in the system would also be provided by enabling the regulator to cover off issues such as appropriate transitional measures if an entity is not immediately able to fully implement a principle or rule, as well as deal with situations where there may be tensions or trade-offs between principles. The economic regulator would also have the power to alter tariffs if they determined an entity was not implementing the principles or rules appropriately.

54. *Recommended option* – We recommend legislation set out powers of the economic regulator to provide guidance, and, if necessary, produce input methodologies and determinations on the implementation of pricing rules and principles.

55. Issue: Geographic price averaging and community affordability – A key driver of the reforms is to address affordability issues, particularly for customers in smaller communities. Geographic averaging is a pricing instrument that can be used to smooth and share costs across communities, contributing to the price objective of affordability. Geographic averaging can occur within a network, within a territorial authority, or within the area covered by the water services entity. Consultation with territorial authorities indicates different views on levels of geographic averaging and which types of customers it could be used to support (residential and /or commercial).

56. We considered which of the two options would best support a need to balance certainty and clarity about what is permissible against water services entities' desire to retain their flexibility to decide on the coverage and timing of geographic averaging.

57. We concluded a combination of statutory and non-statutory approaches would provide the best solution; with geographic averaging enabled but not required by legislation, with the water services entities making the decisions on the basis of any direction in the Government policy statement on water services.

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[2] Decisions on the nature of the economic regulator are covered in the companion Cabinet paper by the Minister of Commerce and Consumer Affairs.

[3] Statutory tools that require specific approaches or outcomes.

58. Additionally, for certainty and clarity we propose the legislation ensures economic regulator would not be able to override geographic averaging. The economic regulator will likely be focussed on efficiency and may not be best placed to take into account other considerations relating to cost sharing or equity. The economic regulator would be able to provide guidance on implementing geographic averaging.

59. *Recommended option* – We recommend geographic averaging is enabled but not required by legislation, leaving decisions about geographic averaging to government through the Government policy statement on water services.

60. Issue: Managing the rate of increase in prices during for the first years of water services entities' operation – Price shocks can increase affordability issues, especially when not expected. In the longer term it is expected the economic regulation system will help mitigate price shocks using revenue glide paths[4].

61. There is however a substantial risk that, in the absence of any other constraints (the counterfactual), some prices could increase significantly before then, particularly given the extent of past underinvestment. This is most likely to impact negatively more on households than commercial consumers.

62. Regulating limits on price rises is complex, particularly in the absence of good information. Currently there is not good information on costs and prices for water services. We consider the best way to manage the short-term price shock risk is to balance certainty for household consumers that the issue will be managed with the flexibility to design any specific constraints based on a better understanding of current cost and price structures.

63. Leaving the non-household sector without prices caps provides an opportunity for change to happen sooner in that sector, with the pricing principles setting boundaries that will mitigate any risk of over-charging.

64. Controlling price increases or imposing revenue caps is a form of price-quality regulation. While such powers provide certainty and price stability for households during the transition, the longer they are in place, the more damaging the effects could be. They would introduce considerable regulatory uncertainty in the longer term and could reduce the ability of water services entities to raise necessary finance from debt markets.

65. Balancing these considerations, we propose to create a regulation-making power to limit the rate of increase in prices and maintain existing tariff structures for the first three years of water services entities' operation. This provides for a transition path before the commencement of economic regulation by the economic regulator.

66. *Recommended option* – We recommend the legislation include a regulation-making power to freeze tariff structures and limit price increases in the first three years of water services entities' operations. The economic regulator would need to be consulted on the making of these regulations.

67. Issue: Removal of existing cross-subsidies – The non-discrimination pricing principle would remove cross-subsidies between different sectors and user groups. It is particularly important that businesses which use larger quantities of water face cost-

[4] A regulatory tool to smooth out price changes over time.

based pricing, to incentivise businesses to use water efficiently. We are concerned some territorial authorities may have offered large commercial water users "sweetheart deals" with low water prices as a hidden subsidy to locate in their district.

68. Addressing this problem by non-statutory mechanisms would mean the water services entities would need to renegotiate contracts, with no guarantee of being able to shift the contract terms to non-discriminatory pricing. Depending on the extent of sweetheart deals this could mean other consumers, particularly household consumers, would bear the impact of those preferential pricing contracts.

69. An alternative approach is to include a provision in the legislation that all drinking water supply and trade waste and wastewater removal contracts (and the like) that are transferred to the water services entities will have their pricing provisions expire after five years. The application to all contracts eliminates the need to specifically identify cross-subsidised deals and fairly applies the provisions to the full set of contracts. Five years is considered sufficient time for businesses to adapt to a possibly higher service price and will enable the water services entities to implement non-discriminatory pricing.

70. Such a provision would support the direction of travel to deliver on the objective of resource efficiency and non-discriminatory pricing principle. It would provide certainty and clarity to existing contract holders about expectations and enable a five-year transition period to adjust contracts. We do not have data on the scale of the problem and hence cannot make assessments about how substantial the issue is.

71. We also note overriding existing contracts, albeit it with a long lead time, could be controversial. Any decision related to contracts with foreign investors would need to be subject to consultation with the Ministry of Foreign Affairs and Trade regarding meeting any international obligations that New Zealand may have to foreign investors.

72. *Recommended option* – We recommend the legislation will cancel the pricing and charging provisions in any contract with a commercial entity for the supply of water services by a water services entity. This would take effect five years after the water services entities commence service delivery operations.

Summary of options analysis

73. The scoring key for the evaluation criteria is set out below. The criteria have been given no differential weightings.

Score	Description				
	Better than the counterfactual		About the same as the counterfactual		Worse than the counterfactual

74. The following table summarises the recommended preferred statutory approach for the set of pricing and charging matters identified in paragraph 37. The counterfactual is not presented in the table because it is the comparator.

Table 1: Summary of evaluation of statutory option for pricing and charging matters against the counterfactual

Pricing/Charging matter	Criterion Provides certainty and clarity	Criterion Gives effect to one or more pricing objectives	Criterion Provides flexibility	Recommended statutory approach Enable/require
Setting out charges in annual tariff list		No specific effect on pricing objectives		Require
Embedding pricing principles and rules to guide tariff setting		Legislated principles will inform price setting. Particularly important for informing cost sharing and equity objectives, as well as economic efficiency.		Require
Empowering the economic regulator		Economic regulator powers support the objectives of economic efficiency and price stability.		Establish powers, enable use of range of instruments
Geographic price averaging and community affordability		Supports the coast sharing and affordability pricing objectives		Enable but not require
Managing transition price shocks		Supports the price stability pricing objective.		Enable with regulation making power to require
Removing existing cross-subsidies		Supports horizontal equity pricing objective		Require

75. The recommended statutory approach summarised above has been consulted with the full range of agencies set out in paragraphs 339 to 342. There has been close engagement with the Ministry of Business, Innovation and Employment in relation to the powers of the economic regulator. No significant issues were raised, and feedback has been addressed.

76. Further sections on other significant pricing issues follows below.

PART A (2) SUPPORT FOR VULNERABLE HOUSEHOLDS EXPERIENCING DIFFICULTY PAYING WATER BILLS

Problem definition

77. Affordability is a key pricing objective and principle for the reform. While geographic averaging can improve affordability by sharing costs there is a need to consider what support could be available for consumers experiencing financial hardship. Households experiencing financial hardship will likely include occupants that are younger, single parents, on benefits as a main source of income, Māori and Pacific peoples, people with disabilities, large households, and renters.

78. Currently, there appears to be a large range in average annual water charges across cities and districts sampled by the Department of Internal Affairs, from a low of about $135 to a high of about $1,900. The average is about $1,300 across the sample. Auckland's average is $1,400. In future, this range is expected to narrow as the water services entities implement more standardised approaches to pricing, including geographic averaging across districts. At the low end of the range, prices almost certainly are below the long-run cost of service provision and do not cover economic depreciation.

79. The combined cost of water bills and rates bills should not materially change when the water services entities are initially set up, other things being equal. Over time, they should be more affordable than if the same level of services were to continue to be provided by territorial authorities. Rates bills should reduce to offset water being separately billed, unless territorial authorities decide to increase their revenues for other reasons.

80. It should be noted people on reticulated networks will be able to access water services regardless of their ability to pay for them. It is also intended property owners will be liable to the water services entity for the entire water bill, including volumetric charges, where these apply. This reflects the status quo in places that currently have volumetric charging. Landlords will be able to pass water services costs through to tenants via rents.

81. There are two main ways to support financially vulnerable households to afford their water bills:

    - targeted financial support; and/or
    - regulating pricing structures.

82. The analysis below assesses options related to both these mechanisms.

83. The Ministry of Social Development and the Office of Disability Issues have been consulted on the options for vulnerable consumers, as well as the full list of agencies set out in paragraphs 339 to 342. No significant issues were raised.

84. We note at this point in the reform process there is a limitation on identifying specific impacts on vulnerable consumers because of the lack of detailed information about current charging practices for water services and the likely charging and billing practices of the water services entities.

Targeted financial support

Problem Definition

85. Consideration has been given to whether the water services entities should have a statutory obligation to provide support to vulnerable consumers as Watercare currently funds a Trust[5] that offers financial assistance to those in Auckland who are struggling to pay their water bills.

86. Central government also provides financial support for vulnerable consumers through the welfare system. Water charges from territorial authorities are included in the definition of accommodation costs, which is used to determine the level of Accommodation Supplement paid to a recipient. This definition of accommodation costs is also used for Temporary Additional Support and feeds through into various assessments of need for other supplementary support. This means that many vulnerable households currently receive support through the welfare system to meet the cost of their water bills or water charges from private landlords.

87. The current Rates Rebate Scheme provides support to low-income owner-occupiers. When water charges are split out from rates bills, some recipients of a rates rebate would receive a lower rebate, even though their total expenses (rates and water) may not have changed.

88. As the reforms are implemented it will be important that consumers are clear about who has responsibility for financial assistance if they are struggling to pay their water bills.

89. The key implementation issue addressed is <u>whether</u> the water services entities should have a requirement to provide targeted financial support for water bills.

90. Questions about the nature of the targeting and the assistance programmes are not analysed in this RIA.

Objectives

91. We want the choice of who is responsible for provision of targeted financial support to be underpinned by:

    - public accountability for financial support decisions, including transparency of decisions;
    - access to information to make decisions;
    - incentives to make fair decisions, consistent with existing financial support; and
    - efficient administrative costs.

[5] The Water Utility Consumer Assistance Trust provides financial support to customers of Watercare Services Limited (Watercare) who are struggling to manage their water and/or wastewater costs. It is a charitable trust that receives funding from Watercare, Auckland's water and wastewater service provider. It is not a statutory arrangement. Such charitable trusts are not guaranteed to continue under the status quo but nothing will constrain their availability.

Options and criteria

92. Two options for who provides targeted financial support have been considered:

    Option 1 – Central government – this is the status quo option.

    Option 2 – The water services entities have a statutory requirement to provide support, with government-set rules.

93. The criteria used to assess these options was consideration of whether the options would achieve the objectives set out above.

Options analysis

Option 1: Targeted financial support is provided by central government

94. Central government has a high degree of public accountability for its financial decisions, through its delivery agencies, parliamentary scrutiny and elections.

95. The ability to implement targeted financial support requires access to personal income and/or wealth information as a basis for targeting. Central government already has power to access this information.

96. Most forms of affordability assistance and financial support in New Zealand are delivered by central government. The high level of transparency and accountability means the government has strong incentives to ensure fairness and coherence of such support. Additionally, existing centralised information and processing systems enables efficient administrative costs.

97. Currently water charges from territorial authorities are included in the definition of accommodation costs, used to determine the level of Accommodation Supplement. This means many financially vulnerable households currently receive support through the benefit system to help meet the cost of their water bills or water charges included in rental costs. This would not change.

98. As outlined below from paragraph 106, we recommend the Rates Rebate Scheme be amended to include water bills as part of the definition of rates. This would mean current beneficiaries of the scheme would be unaffected by the change of water service provider.

99. If in the future these measures are considered insufficient, the government could consider creating a targeted financial support scheme specifically to support financially vulnerable consumers pay their water bills.

Option 2: The water services entities are required to provide targeted financial support

100. The reform model maintains public ownership of water services entities, at the same time providing for financial and operational independence that deliberately lessens political influence on and public accountability for detailed decision- making. This financial independence may make it difficult to publicly scrutinise decision-making in relation to any financial support initiatives.

101. Water services entities do not have access to income or wealth data for their water consumers. The only information available to them is the water bill and enabling either personal information would require new, expensive powers and processes. It would not seem appropriate to give this power to the water services entities, as it is not part of their core business, which is provision of water services.

102. Similarly, because water services entities are not in the business of providing welfare, they have neither the incentives nor the administrative systems to support fair, nationally consistent targeted financial support. It could theoretically be possible to set (by regulation) government rules and oversight arrangements but this would mean an expensive duplication of central government activity for no obvious gain.

103. The table below summarises consideration of criteria against these two options.

	Central government provision – the status quo *(preferred)*	Water service entity provision
Public accountability	High degree of accountability and scrutiny.	Financial and operational independence from owners and the public.
Access to information	Has access to personal income and/or wealth information as a basis for targeting.	No access to personal income and/or wealth information as a basis for targeting.
Incentives for fair, consistent decision-making	High level of transparency and accountability means there are strong incentives to ensure fairness and coherence of such support.	Not core business, so no real incentives to ensure fairness or coherency, especially at a national level.
Efficient administration costs	Existing centralised information and processing systems enable efficiency.	Administering financial support not core business, so administration of this activity likely to be inefficient.

104. *Recommended option* – We recommend that the water services entities are not required to provide targeted financial support and central government continue to be responsible for assessing and providing any targeted financial assistance to households facing financial difficulty in paying their water bills.

105. While we recommend targeted financial support remain the responsibility of central government, nothing constrains water services entities from offering their own additional targeted financial support if they so wish.

Rates Rebate Scheme

Problem definition

106. Targeted support for water costs is also currently offered to low-income owner-occupiers through the Rates Rebate Scheme. This rebate is funded by the central government and implemented by the territorial authorities.

107. When water charges are split out from rates bills, some current recipients of a rates rebate would receive a lower rebate, even though their total expenses (rates plus water) may not have changed[6].

108. Currently around 100,000 people currently receive a rates rebate, 78 percent of whom are recipients of New Zealand Superannuation. The level of subsidy depends on both their income and their rates bill. We estimate about a third of the current recipients of rates rebates (34,000 households) could be affected by the splitting off water bills. They would be the higher income recipients of rates rebates (those with a household income greater than about $27,000 per annum)[7]. Our analysis suggests eligible households with a single person on superannuation would be unaffected, but eligible households with a couple on superannuation would fall into the affected group.

Objectives

109. Our consideration of the options focused on three objectives:

- enabling a smooth transition path for the reform;
- targeting vulnerability[8]; and
- minimising administrative burden.

Options and Criteria

110. Options for this issue are:

Option 1 – Leave the Rates Rebate Act 1973 as it is which would mean that water charges would no longer be considered in assessment of eligibility under the scheme.

Option 2 - Amend the Rates Rebate Act 1973 to include water bills as part of the definition of rates.

111. The criteria used to assess these options was consideration of whether the options would achieve the objectives set out above.

Options Analysis

Option 1: Leave the Rates Rebate Act 1973 as it is, reducing the number of households currently eligible for the scheme

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[6] Water bills are already split out in Auckland but the Auckland Council tops up the Rates Rebate Scheme payments as if water bills were rates bills. This costs the Auckland Council about $500,000 per annum.

[7] Estimates are based on tables of claims by income, rates and rebate range, and the funding formula. Unfortunately the data was not cross-tabulated enabling more fine-grained analysis.

[8] Vulnerability has been defined as households experiencing financial hardship and is covered in more detail in the section on vulnerable consumers at paragraph 77 above.

112. If the Rates Rebate Act 1973 is not amended then some people who are currently eligible for the scheme will see a reduction in the amount they are eligible for, or completely lose eligibility if they no longer meet the threshold for support – even though their overall payment may be the same or more.

113. On the other hand, the Productivity Commission has argued the Rates Rebate Scheme, with eligibility based on home ownership is inherently inequitable[9]. Not amending the Act could be seen as a step to phasing out an inequitable scheme, as recommended by the Commission. The Department will, in the future, be providing further advice on the wider policy settings for the Rates Rebate Scheme.

Option 2: Amend the Rates Rebate Act 1973 to include water bills as part of the definition of rates

114. Amending the Rates Rebate Act 1973 to include water bills would leave current beneficiaries of the Scheme no worse off than they would have been without the three waters changes. This is a significant consideration in helping manage the reform transition. Such a provision however would increase the administrative burden for councils, requiring them to process two sets of bills.

115. The table below summarises consideration of criteria against these two options.

	Leave Rates Rebate Act as is to effectively exclude water services bills	**Amend Rates Rebate Act to include water services bills**
Enable smooth transition for reform	Would create a disruption for the ~34,000 households who would receive a lower (or no) rates rebate.	Would cause little disruption to the status quo.
Targeting focus for vulnerability	Reducing the cost of the Scheme would free up resources that could be better targeted at the vulnerable.	The Scheme is poorly targeted at the vulnerable and this change would preserve the status quo.
Administrative burden	Fewer beneficiaries would reduce the administrative burden of the scheme.	Would increase the administrative burden on territorial authorities and beneficiaries who would also need to include information from water bills in the processing.

[9] The Productivity Commission has recommended phasing out the Rates Rebate Scheme because it is inherently inequitable as:

- renters (whose rent effectively includes the cost of rates) are significantly more likely to require accommodation support than a property owner but are not eligible to apply for a rebate; and
- the key entitlement criteria – property ownership – is not equitably distributed through ethnic and socio-economic groups. This is particularly true of Māori home ownership rates (47 percent) vs Pākehā (71 percent).

116. The table shows the assessment is not straightforward and calls for a judgment on the weighting that should be given to the 'smooth transition' criterion. We are inclined to put a higher weighting on this consideration because the overall benefits of the reforms are so large. A difficult transition could delay achieving some of those benefits.

117. We also note that both the Accommodation Supplement and the Rates Rebate Scheme are imperfect mechanisms for delivering central government financial support to vulnerable households for their water charges. The government could, at a later time, consider reviewing the design and parameters of these mechanisms to improve the targeting of financial support; and/or consider new mechanisms.

118. *Recommended option* – We recommend that the Rates Rebate Act 1973 be amended so water bills will be included, leaving the current beneficiaries of the scheme unaffected by the change in the provider of water services.

Pricing Structures

Problem definition

119. Some pricing structures can help to protect vulnerable households; in particular the ratio between fixed and variable (volumetric) water charges. Other pricing structures can potentially have perverse effects.

120. The issue is whether to legislate for specific pricing structure parameters that support affordability for vulnerable households.

121. There is potential tension for price structure configurations between protecting affordability for large, financially vulnerable households and the resource efficiency principle (which states that tariffs should promote resource efficiency).

122. The Central-Local Government Three Waters Steering Committee is of the view that it is important to give the water services entities as much flexibility as possible in setting prices and that legislatively setting price structure rules would be an unnecessary constraint on establishing price signals related to the level of use.

123. To provide context for a decision on whether to legislatively create pricing rules to protect vulnerable consumers, the discussion below sets out two specific areas of concern.

The ratio between fixed and variable/volumetric charges

124. The ratio between fixed and variable/volumetric charges can have significant distributional impacts. If a water services provider recovers costs through a very high proportion of variable charges, then almost all those charges will be passed on directly to tenants rather than being paid by landlords.

125. Watercare currently charges 100 percent of drinking water charges on a volumetric basis (average about $1,000 per household per annum). Preliminary data suggests that the biggest predictor of household water usage is the number of occupants in the household. Larger households also generally tend to have lower incomes. A 100

percent volumetric charge is regressive both because it may all be passed on directly to tenants[10] and because it hits large households hardest.

126. A very high proportion of volumetric charges is also not an efficient pricing structure that reflects underlying costs. There are substantial fixed costs in supplying drinking water and this should be matched with a roughly similar proportion of fixed charges.

127. The Productivity Commission has explored the issue of water metering and pricing in New Zealand[11]. Case studies from that exploration indicate that, while volumetric charging has an impact on water conservation, the effects can be achieved without moving to very high variable rates that can negatively impact on low-income households.

128. This suggests the possibility of a regulatory rule for residential customers to limit the ratio between fixed and volumetric water revenues so there can be a cap on the total amount of revenue recovered through volumetric charges for residential consumers. Such a rule would not limit the volumetric charges on the bill for any individual consumer. The rule would refer only to the proportion of total charges recovered by the entity, averaged across all residential consumers.

Low usage or block tariffs

129. In some countries, block tariffs are used to try to improve affordability. For example, under these price structures, the first 10 cubic metres of water is priced relatively low, but then the next 10 cubic metres is charged at a higher price.

130. This type of pricing structure rewards all households with low consumption patterns with low prices, but this means that higher consumption households end up paying much more regardless of their ability to pay.

131. Vulnerable households are sometimes large and possibly overcrowded. This means they consume more water, even if the amount per person is relatively low. A block tariff in a large household could lead to undesirable rationing behaviour and have a negative impact on people with specific medical conditions who require large quantities of water.

132. A low usage or block tariff intended to support vulnerable users is difficult to target to that group, has the potential for perverse consumption behaviour, and likely to lead to significant inefficiencies, without much improvement in equity or affordability.

133. This suggests a regulatory pricing rule that for residential customers to disallow price structures that vary the unit price of a volumetric charge based on the level of consumption (such as low user charges or block tariffs).

Objectives

134. In addressing the issue of whether to legislate price structure rules to protect vulnerable household consumers, the objectives are:

- support the affordability pricing objective;

[10] Unlike general rates, volumetric water charges are 'identifiable use' and therefore more likely to be passed on to tenants in rental costs, albeit the property owner will be responsible for paying water bills.

[11] New Zealand Productivity Commission. (2019). Local government funding and financing: Final report. Available from www.productivity.govt.nz

- enable price structure flexibility; and
- provide certainty and clarity.

135. As discussed in the problem definition, there is an inherent tension in the first two objectives which is considered in the options analysis.

Options and criteria

136. The options considered are:

Option 1 –Legislate pricing structure parameters to protect vulnerable consumers.

Option 2 – Leave decisions on pricing structures to the water services entities.

137. The criteria used to assess these options was consideration of whether the options would achieve the objectives set out above.

Options analysis

Option 1: Legislate pricing structure parameters to protect vulnerable households

138. Legislating to implement price structure configurations is one way to address specific affordability concerns related to low user charges and the ratio between fixed and volumetric water revenues. It would certainly provide certainty and clarity to both water services entities and consumers about expectations.

139. There are however tensions and trade-offs that would need to be worked through before finalising the specification of such rules. This would include working (preferably with the water services entities) to decide an optimal ratio between fixed and volumetric water revenues, as well as defining 'residential customers'. [12]

140. We also note rules that make a distinction between residential and other customers may be perceived by some as cutting across the non-discrimination pricing principle that states, 'there is no undue preference shown to any class of customers, so that purchasers of services with the same cost pay the same prices'.

141. It could be argued a better way to target and support vulnerable households to afford their water bills is through income support, assessed based on need. This would remove the risk that pricing rules may distort efficiency and permit too broad brush targeting for protecting vulnerable households.

142. We propose rules are enabled through regulation-making power. This will provide a degree of flexibility to adapt rules in the future, if seen as necessary.

Option 2: Leave decisions on pricing structures to the water services entities.

143. If decisions on pricing structures are left to water services entities, there will be no clear price parameter setting to address identified affordability concerns. Water services entities may or may not implement pricing structure measures to protect vulnerable households, and national consistency would be unlikely.

[12] We note the terminology "domestic customers" which was recommended by the NTU and common language in the industry. It covers households and also domestic level use from commercial users, for example small retail. Bulk water supplies for industrial users tend to be on a commercial supply with its own meter, and these users tend to also have a separate "domestic connection" for the kitchen, toilet etc. This means the commercial supply can be cut without cutting of the sanitation.

144. Water services entities would have the flexibility to establish pricing structures within the context of legislated pricing principles. The economic regulator would be able to issue guidance on how to implement the legislative pricing principles.

145. We note that, although affordability is a key pricing objective, the proposed legislated pricing principles do not include affordability, and so would not be a key concern for the regulator.

146. The assessment against the different criteria is summarised in the following table:

	Legislate pricing structure parameters to protect vulnerable households *(preferred)*	**Pricing structure decisions left to the water services**
Supports affordability pricing objective	Provides explicit way to support the objective, with a focus on vulnerable consumers.	Water services entities may or may not implement pricing structure measures to protect vulnerable customers.
Enables price structure flexibility	Water services entities would be required to implement the statutory provisions. While enabling rules through regulation-making power provides scope for change over time, water services entities would prefer full price structure flexibility.	Price structure flexibility enabled within the context of pricing principles.
Provides certainty and clarity	Legislation will make clear the specific pricing parameters that will be regulated to support affordability concerns. This will give assurance to vulnerable consumers.	Uncertain and unclear for vulnerable consumers. No clear parameter setting for water services entities.

Positive alignment with criteria	**Neutral alignment with criteria**	**Negative alignment with criteria**

Recommended option

147. We recommend the legislation include regulation-making power aimed at protecting vulnerable households, to establish price rules applying to all residential consumers:

- to set a limit on the ratio between fixed and volumetric water revenues;
- to not allow the use of pricing structures, such as block tariffs or low user charges, that vary the unit price of a volumetric charge based on the level of consumption.

PART A (3) STORMWATER PRICING AND CHARGING

Problem definition

148. Stormwater services and management would be provided by water services entities, as per Cabinet agreement [CAB 21-MIN-0226 refers].

149. Stormwater is a public good and therefore needs to be priced and charged differently to drinking water and wastewater. Furthermore, stormwater systems are non-excludable: it is impossible to exclude people from using and benefiting from them. This makes it difficult to create user charges for stormwater systems.

150. The problem being addressed here is, given the public good nature of stormwater services, who should be billed by the water services entities to recover stormwater costs.

Objectives

151. The objectives are to have a billing system for stormwater services that:

- is practical and feasible;
- equitably spreads the cost of stormwater services (given the public good nature of stormwater services we consider payment should be progressively scaled to means); and
- supports achievement of stormwater outcomes, including capturing and slowing water flow to reduce flooding impacts, improvements in water quality of receiving environments, and achieving Te Mana o te Wai.

Options and criteria

152. We considered three options for who should be charged for stormwater:

Option 1 – Water services entities bill the Crown for stormwater services (this means costs are recovered through general taxation.

Option 2 – Water services entities bill territorial authorities for stormwater services, with territorial authorities then recovering those charges through rates.

Option 3 – Property owners in a region pay a fee/levy/rate for stormwater services, based on their rateable valuation.

153. The criteria used to assess these options was consideration of whether the options would achieve the objectives set out above.

Options analysis

Option 1: Water services entities bill the Crown for stormwater services (this means costs are recovered through general taxation

154. Billing the Crown and recovering stormwater costs through general taxation is a feasible funding mechanism with relatively low compliance costs. There would be a need for additional administrative steps between the entities and the Crown to implement the billing and payment process.

155. The equity effects of billing and funding stormwater through general taxation is neutral. While the tax system itself is relatively progressive there would be no direct changes for taxpayers arising from this option.

156. If stormwater is charged to and paid for by the Crown it is unlikely to have any direct impact on stormwater outcomes, as there will be no direct link between the services provided and the services billed.

Option 2: Water services entities bill territorial authorities for stormwater services, with territorial authorities then recovering those charges through rates

157. Billing territorial authorities would be administratively practical. However, treating territorial authorities as the customer and having them recover stormwater charges through rates is likely to undo the balance sheet separation between territorial authorities and water services entities. This would affect the ability of territorial authorities to borrow money and negate one of the large benefits of the reforms.

158. In regard to equity effects, the recovery of charges to territorial authorities through rates based on property valuations are likely to be more progressive than general taxation.

159. If stormwater charges are billed to territorial authorities, this may create an incentive for territorial authorities to use their planning powers and other tools to minimise the overall cost of the stormwater system.

Option 3: Property owners in a region pay a fee for stormwater services, based on their rateable valuation

160. This approach to billing for stormwater services is feasible and does not run into the balance sheet issues of option 2. Charging properties on the basis of their rateable value would require territorial authorities to share their rating information with water services entities on a reasonable cost basis.

161. Charging all properties in a region acknowledges the public good nature of stormwater systems, with everyone in a region benefiting from them, though the level of benefit will vary. As with option 2, charges based on property values contributes to equity through distributional impacts. Generally, property values are highest in urban areas and lowest in small towns.

162. Billing ratepayers is likely to have little incentive effects on stormwater outcomes, except to the extent that dissatisfaction may be pricked up through regular consultation processes on services and prices.

163. The assessment against the different criteria is summarised in the following table:

	Bill the Crown	Bill territorial authorities	Bill property owners (ratepayers) *Preferred*
Practicality and feasibility	Feasible with low compliance costs.	Not feasible – recovering stormwater charges through rates is likely to undo the balance sheet separation between territorial authorities and water services entities.	Feasible and no balance sheet issue. Would require territorial authorities to share rating information
Equitable spread of costs	While the tax system itself is relatively progressive there would be no direct changes for taxpayers.	The recovery of charges to territorial authorities through rates based on property valuations are likely to be more progressive than general taxation.	As with option 2, charges based on property values contribute to equity.
Supports stormwater outcomes	No direct impact on stormwater outcomes, as there will be no direct link between the services provided and the services billed.	Charging territorial authorities may create an incentive for them to use their planning powers and other tools to minimise the overall cost of the stormwater system	Likely to have little incentive effects on stormwater outcomes, except to the extent that dissatisfaction may be pricked up through regular consultation processes.

Positive alignment with criteria	Neutral alignment with criteria	Negative alignment with criteria

164. We also considered but rejected an option of billing stormwater on an 'exacerbator pays' basis. This would most likely require charging based on the proportion of land covered with an impermeable surface. There are significant informational challenges to creating a system such as this and at a minimum it would require the collection of new types of property information. Many impermeable surfaces are found on public good assets such as pavements and roads. These are owned by local and central government. This would lead to a complex range of funding sources, which combine elements of all the options considered above. Given the complexity, we did not pursue this option further.

Recommended option

165. We recommend stormwater be funded through a charge on ratepayers.

166. We also recommend the new system come into effect no later than 1 July 2027, but that it can be brought into effect sooner through regulation. In tandem, we also propose a regulation making power so the responsible Minister can put in place an appropriate transitional pricing approach for the first three years of waters services entities operation. These recommendations are to manage the risks arising from very poor information on current stormwater charges across the country.

167. In developing the recommended approach for stormwater charging, we have engaged with the Rural Supplies Technical Working Group, the Stormwater Reference Group[13], the joint Central-Local Government Three Waters Steering Committee, and the Ministry of Primary Industry, as well as consulting with the full set of agencies identified in paragraphs 339 to 342. Any issues raised have been addressed.

13

The Stormwater Reference Group was set up in March 2022 to continue the work of the Stormwater Technical Working Group, with the same chair, and members from Taumata Arowai, local authority staff from each of the four entities, and iwi and Māori stormwater practitioners.

PART A (4) GROWTH CHARGING

Problem definition

168. A key objective for the three waters reform is the need to grow critical water infrastructure, including the water infrastructure needed for a sustainable housing supply.

169. Infrastructure growth can be typically funded by financing the cost of capital and accounting for depreciation and financing costs over the life of the asset. Growth charges enable the recovery of investment in advance of growth, or shortly after.

170. In the current system, growth charges play a significant role in funding growth infrastructure. The two most significant charges for water infrastructure are:

    - development contributions, a statutory charge under the Local Government Act 2002 available exclusively to territorial authorities levied typically when a resource or building consent is issued; and
    - infrastructure growth charges, a contractual charge levied by Watercare for anyone connecting to the network.

171. The Local Government Act 2002 provides detailed principles for the use of development contributions, at the heart of which is that they may only be used for genuine growth assets caused by the development(s) being charged. Growth charges in their various forms provide a significant source of revenue.

172. There are compelling reasons to apply growth charges in a three-waters context (implied by their widespread use under the current system). These include:

    - Ensuring growth investment is economically efficient: If the cost of growth infrastructure investment is 'socialised' by including a growth component in general tariffs, rather than separate growth charges, then it is unpriced in investment decision making;
    - Reducing the financing burden of the water service provider: Most forms of growth charges shift the burden of financing network growth to some degree onto developers/landowners. Where a service provider is debt constrained, growth charges provide a mechanism for growth investment that would otherwise be impossible and can free up balance sheet room for investment elsewhere;
    - Provide an 'incentive' for entities to enable growth: As growth charges provide revenue associated with growth, they make enabling growth arguably more attractive. Where current users are required to fund new growth, there may be pressure on decision makers to discourage growth;
    - Avoiding windfall gains and transfers: If owners of undeveloped land have no obligation to contribute to growth costs, they may get an increase in land value (or a removed liability if they develop the land themselves,). This is because the cost has transferred to existing users who will instead pay through general tariffs.

173. Although the use the use of growth charges will likely change over time, the core benefits they provide in supporting infrastructure and housing development will remain valid. The risks associated with removing them entirely are acute:

- it could potentially slow the rate of growth investment – and with it, housing development - whether because of financial constraints or poor incentives for growth investment by the entities incentives;
- Some landowners would receive material windfall gains (effectively a transfer from overall users who would now be paying those costs previously expected to fall on landowners); and
- An alternative model of funding and/or more rapid increase in wider pricing for general users would likely be required.

174. On this basis, the power to use growth charges should continue for water services entities. We suggest these be named 'water infrastructure contributions'.

175. The key policy implementation issue to be analysed is whether to provide for growth charges as a statutory charge with some prescription, as with the development contributions regime, or simply enable a contractual charge as with Watercare or in the electricity sector.

176. The Local Government Act 2002 provides detailed principles for the use of development contributions, at the heart of which is that they may only be used for genuine growth assets caused by the development(s) being charged. Growth charges in their various forms provide a significant source of revenue.

Objectives

177. The objectives for growth charges powers are to:

- provide consistency and certainty across New Zealand as to the approach taken to growth charges for water services;
- enable water services entities to recover the costs of growth as fully as practical and in a way that incentivises efficient development by investors;
- mitigate risk of excessive use of such charges; and
- enable the system of growth charging to evolve to address changing infrastructure growth requirements and align with changing government policy priorities (relating to residential and commercial development).

Options and criteria

178. Officials considered three options:

Option 1 – Statutory enablement with prescription: with prescription modelled closely on current Local Government Act 2002 development contributions detailed approach and methodology.

Option 2 – Statutory enablement, principles-based. The legislation would provide some basic boundaries and guiding principles but provide more flexibility in methodology for water services entities.

Option 3 – Statutory enablement, but unconstrained. The legislation would enable growth charging but set no specific boundaries or direction.

179. The criteria used to assess these options was consideration of whether the options would achieve the objectives set out above.

Options analysis

180. All three options provide for statutory enablement of growth charges, to be named 'water infrastructure contributions'. This removes any possible ambiguity about the appropriateness of growth charges, and thus reduces the risk of fundamental challenge of their use.

Option 1: Statutory enablement with prescription

181. Prescriptive legislation modelled on current development contributions would mean growth charges could only be used for genuine growth assets caused by the specific developments being charged.

182. This would require the water services entity to have identified to a reasonably high degree of certainty the exact works required, and their costs, attributable to a particular development, to be able to charge for growth. This can be over ten or more years in advance in many cases. In practice this is difficult, given inherent uncertainty in requirements in advance of the infrastructure work beginning, and with uncertain pace of development. This is particularly challenging in the case of drinking water and wastewater, as the condition and spare capacity of the system is often less well known than for 'above ground' infrastructure.

183. A prescriptive approach would ensure national consistency and certainty and mitigate the risk of excessive charging, However, the high threshold of certainty about future investment and attribution required by prescription would make it very difficult to appropriately recover growth cost for water investment, given inherent uncertainties associated with future requirements and costs. It is likely that a greater portion of growth costs would fall on overall users than is preferred and appropriate price signals would be lost for many investments.

184. This option would also not be readily adaptable to align with changing government priorities for residential and /or commercial development.

Option 2: Statutory enablement, principles-based (preferred)

185. While this option would have similar principles to those in the Local Government Act 2002[14] for development contributions, it would not prescribe the costing methodology in the same detail. It would not require charges to be tied just to specifically identified activities. This would allow water services entities to operate on reasonable forecasts of growth costs.

186. The principles will set clear expectations that will support a nationally clear and consistent approach. The absence of a prescriptive costing methodology will enable costings to adapt and evolve as infrastructure needs change. It will also facilitate alignment with changing government priorities on residential and commercial development.

187. A risk of this approach is greater flexibility leads to unreasonable application of charges. Under this option the principles would set boundaries and any entity diverging too far from them would risk legal challenge. An economic regulator could

[14] These principles for Development Contributions can be found in section 197AB of the Local Government Act 2002. That section is reproduced in Appendix

set more prescriptive rules if experience proves this necessary or the government could put constraints in place through the government policy statement.

188. The ten years of experience Watercare using infrastructure growth charges (which are less constrained than what is proposed here) suggests even without a prescriptive approach, reasonable use is likely.

189. The other risk is the reasonable, but still potentially higher, charges enabled by this approach could impact negatively on development. We consider that from an overall development perspective the benefits of adequately funding growth infrastructure likely outweigh the impacts of higher charges. Nevertheless, many developers will tend to prefer the more prescriptive development contribution-regime to the more enabling one described above.

Option 3: Statutory enablement but unconstrained

190. This option would provide no certainty of a consistent approach across New Zealand and has the strongest risk of unreasonable application of charges. As with option 2, economic regulatory guidance or a Government policy statement could set constraints if proved necessary, but this is a weaker approach to mitigate the risks.

191. This option would enable the system of growth charging to evolve but the lack of boundaries or guidance means there would be low confidence it would necessarily align with government priorities for residential and commercial development.

192. There is also a risk that, without principles and guidance that supports allocative efficiency, we will see little geographic variation in growth charges. As a result, the true cost of investment won't be reflected in the land prices paid by developers, and they will not be incentivised to develop in those places where services can be delivered more efficiently.

193. The table below summarises the options assessment.

	Statutory enablement, with prescription	Statutory enablement, principles based *(preferred)*	Unconstrained
Consistency and certainty	A prescriptive approach would ensure certainty national consistency.	The principles will set clear expectations to support a nationally clear and consistent approach.	No certainty of a consistent approach across New Zealand
Mitigates risk of excessive charge use	Prescriptive methodology mitigates the risk of excessive charging.	Some risk but the legislated principles set boundaries and any entity diverging too far from them would risk legal challenge.	This option has the strongest risk of unreasonable application of charges. Economic regulatory guidance or a Government policy statement could set constraints, but this is a weaker approach to mitigate the risks.
Fully recover cost and drive allocative efficiency	Prescription would make it very difficult to appropriately recover growth cost for water investment, given inherent uncertainties associated with future requirements and costs.	The absence of a prescriptive costing methodology will enable costings to adapt and evolve as infrastructure needs change.	Without principles and guidance to drive allocative efficiency developers will not be incentivised to develop in those places where services can be delivered more efficiently
Enables system to evolve and align with other government development priorities	Prescriptive methodology means not readily adaptable to align with changing government priorities for residential or commercial development.	Principles without prescription will provide an enabling framework that can facilitate alignment with changing government priorities	Lack of boundaries means there would be low confidence that growth charging would necessarily align with government priorities

Positive alignment with criteria	Neutral alignment with criteria	Negative alignment with criteria

Recommended option

194. We recommend:

- growth charging for water services entities for drinking water, wastewater and stormwater be enabled through a statutory instrument called a 'water infrastructure contribution'; and
- water infrastructure contributions operate on a principles-based model, rather than the more prescriptive development contribution model.

195. In developing the growth charging approach, we have engaged with the Rural Supplies Technical Working Group, joint Central-Local Government Three Waters Steering Committee, Ministry of Housing and Urban Development, a sample of high growth territorial authorities and the Property Council. In addition, the proposals have been consulted with the full set of agencies identified in paragraphs 339 to 342. Issues raised during consultation have been addressed.

PART B: LAND ACCESS PROVISIONS

Problem definition

196. Network utility providers, such as water, electricity, gas, and telecommunications network operators have statutory powers relating to the acquisition of and rights of entry onto private land to install and access network infrastructure. For local authority water services under the status quo, these provisions are primarily found in the Local Government Act 2002 and the Local Government Act 1974.

197. In addition to the general powers all local authority water service providers have, the Local Government (Auckland Council) Act 2009 empowers specific non-council Auckland water organisations with some of these Local Government Act 2002 powers as well as some bespoke powers that only apply in Auckland.

198. The establishment of the water services entities will change the status quo, and therefore it is also useful to consider the counterfactual situation in which the water services entities would be established as legal entities (through the Water Services Entities Bill). If the necessary land access provisions are not transferred across to the water services entities, they would not have all the powers required to manage their networks[15], including the powers to install and maintain infrastructure situated on land they do not own.

199. Cabinet has already agreed the water services entities will have the statutory powers, functions, and responsibilities required to fulfil their purpose and objectives, and undertake the roles envisaged, including the powers and responsibilities relating to water services delivery currently held by local authorities under various pieces of legislation [CAB-21-MIN-0226 refers]. Cabinet also noted further work would be required to identify precisely which powers, functions, responsibilities, and assets would be transferred to, and held and exercised by, the new entities.

200. It is therefore possible a straight 'lift and shift' of land access provisions from local government legislation to the water services entities legislation could occur, where the land access powers simply transfer across with no further changes or enhancements. But this creates potential problems. One area where local authorities' statutory rights are weaker than those of other network utilities is they do not have a statutory right to site their infrastructure in the road reserve. Under the status quo, local authorities are both the local road owner and the water services infrastructure owners, and therefore such a right is unnecessary. When water services infrastructure is transferred to the water services entities, this could cause problems if not remedied through legislation.

201. Additionally, the current local authority land access provisions provide limited recognition and protection for Māori land; the need to make legislative amendments through these reforms provides an opportunity to enhance and update some of the land access provisions.

202. Therefore, the problem can be summarised as:

- If powers relating to land access for utility infrastructure are not transferred to, or replicated for the new water services entities, they will not have all the necessary

[15] Assuming the relevant network assets and service delivery obligations are transferred to the water services entities

powers to install, maintain, repair, or protect water-related infrastructure, which would prevent them from carrying out their functions and achieving their objectives;

- Additional powers (with appropriate checks), beyond those currently enjoyed by local authorities, may be necessary for water services entities to operate effectively, such as the ability to site infrastructure in road reserves.
- A straight 'lift and shift' of local authority provisions would not reflect emerging best practice with respect to Māori land.

Objectives

203. The objectives are to ensure the water services entities at a minimum have the necessary provisions to access land they would have had if they still were local authorities managing water services and infrastructure, and to enhance these provisions where doing so will bring about efficiency benefits for the deployment, maintenance and repair of network infrastructure. The objectives identified are:

    - include the necessary powers and duties local authorities currently have in relation to accessing land for water services infrastructure installation, maintenance, and repairs, and where possible align these with the powers other utilities currently have to access land, including the power to site infrastructure in road reserves;
    - ensure local authorities retain the residual powers they will continue to need, whilst not leaving them with surplus powers;
    - apply appropriate limitations on the use of land access powers, to minimise the impact on private property owners; and
    - reflect the principles of the Treaty of Waitangi in the treatment of Māori land.

Options and criteria

204. Officials considered two options:

    Option 1 – Transfer current provisions in their entirety from local government legislation to the new water services entities legislation. This option would be a straight 'lift and shift'.

    Option 2 – Transfer and adapt local government and utilities legislation provisions for the water services entities. This option involves considering the land access provisions for water services entities in three 'layers':

    - transfer most of the current land access provisions in local authority legislation to the water services entities, or replicate those which will continue to apply to local authorities;
    - adapt some land access provisions from legislation governing other utilities, such as electricity, gas and telecommunications, to bring the powers for water services entities into alignment; and
    - enhance/update some land access provisions to provide better recognition and protection for Māori land.

205. The criteria used to assess these options was consideration of whether the options would achieve the objectives set out above.

Options analysis

Option 1: Transfer current provisions in their entirety from local government legislation to the new water services entities legislation

206. We considered the option of 'lifting and shifting' the land access provisions in their entirety from local government legislation to the new water services entities legislation. This would address the disadvantages of Option A, by clearly placing responsibility for land access with the water services entities and removing local authorities from the equation.

207. This option, however, presents a number of disadvantages, as current land access provisions:

- do not specifically provide for access to road reserves administered by local authorities, which water services entities would require;
- reflect different accountability arrangements for local authorities compared to water services entities – for example, some current access provisions empower a local authority to act by resolution of the governing body or as an administrative decision;
- are inconsistent with provisions in other network utilities legislation, such as safeguards for landowners, including recognition of the nature of Māori land;
- do not include powers which are currently set out in bylaws, where it would be preferable to take a national approach (such as controlling access to drinking water catchment areas);
- need to be modernised, in the case of the drains provisions in the Local Government Act 1974, to reflect the wider approach to stormwater; and
- in the case of some provisions, may still be required by local authorities in the exercise of their responsibilities (for example, where the powers are not specific to water services or relate to local authorities' residual stormwater responsibilities).

Option 2: Transfer/replicate and/or adapt local government and utilities legislation provisions for the water services entities (Preferred)

208. To address the objectives embedded in the criteria, our preferred approach is to consider the land access provisions for water services entities in three 'layers':

- transfer most of the current land access provisions in local authority legislation to the water services entities, or replicate those which will continue to apply to local authorities;
- adapt some land access provisions from legislation governing other utilities, such as electricity, gas and telecommunications, to bring the powers for water services entities into alignment – this would include powers such as access to road reserves, and provide additional safeguards for landowners (such as escalation processes for disputes); and
- enhance/update some land access provisions to provide better recognition and protection for Māori land.

209. Under this approach, the majority of the current local authority provisions will be transferred or replicated for water services entities, including entry to inspect and

maintain existing works, construction of works on private land, entry to check utility services for misuse, undertaking works if the owner was required to but defaults, and removal of tree roots and other obstructions from infrastructure.

210. Similarly, water services entities will have equivalent powers to local authorities in relation to:

- acquiring land for local works under the Public Works Act 1981;
- acting as a requiring authority for the designation of land under the Resource Management Act 1991 (or its successor legislation); and
- being subject to the national code of practice which regulates access to transport corridors under the Utilities Access Act 2010.

211. However, adapting some of the land access provisions for the water services entities, including from legislation governing other network utilities, will better reflect their place in the regulatory system. This more tailored approach includes:

- clarifying responsibilities for stormwater, as local authorities will still have some residual obligations in this regard;
- enabling water services entities to construct, repair and maintain works on any roads, including those administered and/or owned by local authorities; an
- updating the rights of access for consistency with other utilities legislation, including provisions for notice, conditions, access without notice in emergencies, and the use of court orders.

212. These refinements do not result in any greater powers for water services entities than currently exists for local authorities – if anything, the proposed alignment of processes with the legislation governing other utilities will offer further protections for landowners, rather than less.

213. This is also demonstrated by the proposed provisions to protect Māori land. Some of these provisions are consistent with recent legislative amendments to recognise the special nature of Māori land, such as preventing access to marae, urupā and Māori reservations without consent. Other provisions direct the water services entities to processes under the Te Ture Whenua Māori Act 1993 when providing notice to, or seeking the consent of, multiple owners of Māori land for access.

214. Although some of these Māori land provisions are more extensive than what is currently in place for local authorities and other network utilities, this reflects emerging best practice and draws on existing processes rather than establishing new powers. The provisions are not so onerous they undermine the objective of providing the water services entities with the necessary powers to access land for infrastructure installation, maintenance, and repairs. Further, the Crown's commitment to the Treaty principle of 'active protection' of Māori interests, including the use of their lands, means additional steps should be taken when exercising powers which could impose on those interests.

215. The table below summarises the options assessment.

	Transfer provisions to water services entities in entirety	Transfer provisions and adapt and enhance *(preferred)*
Includes necessary powers and duties and align with other utilities	Most necessary powers would be available to the water services entities, but not having a statutory right of access to the road reserve would be a critical gap.	Transferring while adapting and enhancing the existing powers that local authorities have would ensure nothing is missed.
Local authorities retain appropriate residual powers	A straight 'lift and shift' of powers across to the water services entities would likely be too blunt. Careful consideration of what powers local authorities need to retain is needed.	This approach provides for careful consideration of what powers local authorities need to retain.
Appropriate limitations, especially relating to the impact on private property	While the Local Government Act 2002 provisions have some safeguards in place, they are inconsistent with other utilities.	Alignment with other utilities' land access provisions ensures there are appropriate safeguards in place.
Te Tiriti o Waitangi principles in the treatment of Māori land	This approach does not provide the ability to reflect emerging best practice in applying Te Tiriti o Waitangi principles in the treatment of Māori land.	This approach provides the ability to reflect Te Tiriti o Waitangi principles in the treatment of Māori land.

Positive alignment with criteria	Neutral alignment with criteria	Negative alignment with criteria

Recommended option

216. We recommend Option 2, transferring and adapting local government and utilities legislation provisions for the water services entities in three 'layers':

- transfer most of the current land access provisions in local authority legislation to the water services entities, or replicate those which will continue to apply to local authorities;
- adapt some land access provisions from legislation governing other utilities, such as electricity, gas and telecommunications, to bring the powers for water services entities into alignment – this would include powers such as access to road reserves, and provide additional safeguards for landowners (such as escalation processes for disputes); and
- enhance/update some land access provisions to provide better recognition and protection for Māori land.

217. The preferred approach has been developed in collaboration with Te Arawhiti to ensure appropriate protections are in place for Māori land, and is supported by Te Puni Kōkiri. Toitū Te Whenua Land Information New Zealand, the Department of

Conservation, the Ministry of Transport, Waka Kotahi, and KiwiRail have also been involved in developing the proposals to ensure arrangements relating to public land generally, transport corridors and conservation land specifically are appropriate. The Ministry for the Environment has been engaged in the proposals relating to the Resource Management Act 1991. The land access proposals specifically have also been tested with the Central-Local Government Three Waters Steering Committee. In addition, the proposals have been consulted with the full set of agencies identified in paragraphs 339 to 342.

PART C: STORMWATER MANAGEMENT RESPONSIBILITIES

Problem definition

218. In June 2021, Cabinet agreed "the water services entities will be responsible for services and infrastructure relating to stormwater quality and quantity, including taking over the related services and assets currently held by territorial authorities (though not including stormwater services and infrastructure related to their role as road controlling authorities)" [CAB 21-MIN-0226 refers].

219. Cabinet also agreed regional council functions and the infrastructure they use as river and flood management scheme operators is outside of the scope of the Three Waters Reform Programme [CAB 21-MIN-0226 refers].

220. Unlike drinking water and wastewater, which is made up of hard infrastructure (such as pipes, plants, and reservoirs), stormwater management uses a combination of hard infrastructure like pipes and soft infrastructure, such as parks. The soft infrastructure that makes up the stormwater system generally serves another predominant purpose but is critical to the effective functioning of the stormwater system. It would be inappropriate to transfer all stormwater related infrastructure to the water services entities, as this would result in them managing infrastructure which was not primarily designed to manage stormwater (for example a park). Transport corridors (such as roads) are also an important part of the stormwater system.

221. The Stormwater Technical Working Group and the Stormwater Reference Group have worked with officials to establish an allocation of responsibility for different components of the stormwater system (excluding stormwater infrastructure in the transport corridor), based on predominant use and criticality of assets and land to the effective functioning of the stormwater system.

222. The allocation demonstrates it is not possible or practical for the water services entities to own all parts of the stormwater system. Ownership and management responsibility for reserves and transport corridors will stay with local authorities and transport corridor managers (territorial authorities for local roads, Waka Kotahi for highways, and KiwiRail for railways). This means the water services entities will not have full control over all aspects of the stormwater system and creates the potential for integration problems.

223. Through the existing Cabinet decisions, water services entities will be responsible stormwater quality and quantity, which means resource consents issued by regional councils relating to stormwater networks and discharges into the receiving environment will be transferred to the water services entities, who will become accountable for compliance. If the water services entities do not have adequate ability to control or influence the inputs into the stormwater network, it could become difficult for them to achieve compliance with consent conditions and achieve the environmental outcomes sought.

224. To lift the performance of the stormwater system, the water services entities will need to be able work with territorial authorities and transport corridor managers to coordinate activities to support the operation and development of the wider stormwater system. The policy design issue is what is the best mechanism to ensure effective stormwater management cooperation and coordination between the water services entities, territorial authorities, and transport corridor managers.

225. Therefore, the problem can be summarised as:

- there are significant and ongoing integration requirements with local authorities (as managers of parks and reserves), regional council (for catchment management, flood management, and civil defence), and road controlling authorities (who will mostly be territorial authorities) that must be provided for to realise the full benefits of the reform; and
- without integration with territorial authorities' residual stormwater functions, the ability for water services entities to achieve the outcomes sought by the Three Waters Reforms is limited.

Objectives

226. The objectives are to:

- support successful stormwater outcomes by:
  - providing for an effective and participatory system-wide framework for stormwater planning and decision-making;
  - allowing for effective monitoring and oversight of stormwater issues;
- provide flexibility: empower territorial authorities and water service entities to develop local arrangements that suit their unique needs;
- encourage and enable positive, constructive relationships between local authorities and water services entities; and
- provide certainty and clarity: ensure ultimate responsibility and practical delineation of roles and responsibilities is clear to all parties.

Options and criteria

227. Three options were considered:

Option 1 – Clearly defined statutory roles and responsibilities for all parties involved in the stormwater system.

Option 2 – Clearly defined statutory roles and responsibilities for all parties involved in the stormwater system, including a statutory obligation to cooperate and coordinate.

Option 3 – Clearly defined statutory roles and responsibilities for all parties involved in the stormwater system, with a statutory obligation to cooperate and coordinate, and a requirement to use specified collaboration tools (relationship agreements and stormwater catchment management plans).

228. The criteria used to assess these options was consideration of whether the options would achieve the objectives set out above.

Options analysis

Option 1: Clearly defined statutory roles and responsibilities, with no statutory obligation to cooperate

229. Once three waters services are separated out from territorial authorities, there are many areas where the territorial authorities and water services entities will need to continually interface with each other, particularly in their stormwater management responsibilities. Due to the practical operational nature of many of these activities,

they are likely to require case-by-case arrangements rather than having precise settings in legislation.

230. Defining clear statutory responsibilities with no obligation for the parties to reach practical arrangements for their specific needs risks creating confusion and conflicts if interface issues are not explicitly identified and worked through. This option would not provide flexibility and is unlikely to be conducive to establishing constructive relationships.

Option 2: Include a statutory obligation to cooperate and coordinate

231. A statutory obligation to cooperate would alleviate some of the problems of option 1, however it is considered specifying collaboration tools would do even more to support successful stormwater outcomes.

Option 3: Include specified collaboration tools (relationship agreements and stormwater catchment management plans)

232. Specified collaboration tools, such as relationship agreements and stormwater catchment management plans, would be more effective at ensuring coordination is effective. These would provide mechanisms for the parties to establish practical ways of working together, consistent with any existing statutory obligations, and support coordinated activities to lift the performance of the stormwater system.

233. Relationship agreements would set out respective accountabilities for operating and maintaining the stormwater system, as well as other matters that water services entities and territorial authorities, regional councils, and transport corridor managers would need to collaborate on.

234. We have considered a range of sub-options to determine the most appropriate legislative settings for relationship agreements and recommend it be mandatory for water services entities and other parties to enter into these agreements, but they be non-binding. They are not intended to be contractual, but rather to facilitate effective working relationships and stormwater management interfaces.

235. This type of agreement has been utilised in Auckland between Auckland Transport and Auckland Council's Healthy Waters department.

236. While we think there will be strong incentives on these agencies to enter into such agreements voluntarily, the critical importance of these agreements for stormwater outcomes mean we recommend the requirement should be mandatory for territorial authorities, transport corridor managers, and regional councils.

237. Water services entities and other organisations, such as the Department of Conservation, iwi and hapū, and/or potentially some private landowners may also want to establish relationship agreements. We do not propose these agreements are mandatory, and instead propose that the water services entities have the flexibility to enter into an agreement with any other relevant and willing organisations or individual.

238. We do not recommend all parties be required to enter into a multilateral agreement (in other words, we do not recommend each water services entity and all regional councils, territorial authorities, and transport corridor managers who it overlaps will enter a single agreement), but rather that bilateral agreements are required, and multilateral agreements are not precluded. By starting these agreements at a one-to-

one level, it is thought this may encourage the relationships to operate at a more practical operational level covering important collaboration matters such as the methods for sharing information and who will keep overland flow paths in public reserves clear.

239. Stormwater catchment management plans are proposed as another critical mechanism (alongside the relationship agreements), to support water services entities, territorial authorities, transport corridor managers, and regional councils to work together collaboratively to improve stormwater outcomes.

240. The purpose of stormwater catchment management plans is to provide a strategic framework for water services entities, territorial authorities, transport corridor managers, regional councils, and other relevant parties to plan for, and operate, the stormwater system. These plans would help to facilitate integration among the parties involved in stormwater service provision so they can take a whole of system approach and provide direction for the future development of the stormwater system.

241. To ensure the stormwater catchment management plans and relationship agreements work in tandem, we recommend that, like the relationship agreements, there is statutory obligation on territorial authorities, transport corridor managers, and regional councils to work with water services entities to develop stormwater catchment management plans.

242. The water services entities will also need to work with other organisations or individuals, for example the Department of Conservation or potentially private landowners, to develop the stormwater catchment management plans. We recommend these arrangements are voluntary, and the water services entities have the flexibility to work with relevant parties to support the development of the stormwater catchment management plans.

243. The stormwater catchment management plans will also provide a mechanism for water services entities (and the other organisations) to articulate how the provision of stormwater services will align with Te Mana o te Wai Statements.

244. The table below summarises the options assessment:

	Clearly defined statutory roles and responsibilities, with no statutory obligation to cooperate	Statutory obligation to cooperate and coordinate, without specified collaboration tools	Statutory obligation to cooperate and coordinate, with requirement to use specified collaboration tools *(preferred)*
Support successful stormwater outcomes	Without appropriate flexibility and constructive relationships, this approach may not strongly support the achievement of successful stormwater outcomes.	This approach may not strongly support the achievement of successful stormwater outcomes.	This approach is expected to best support successful stormwater outcomes though the use of specified collaboration tools which focus specifically on stormwater management.
Provide flexibility	This approach would not provide any flexibility for parties to collaborate and establish practical local approaches to managing intersecting responsibilities.	This approach provides flexibility for parties to determine how they will cooperate and coordinate.	Specifying collaboration tools provides less flexibility than leaving this unspecified.
Enable constructive relationships	This approach is unlikely to be conducive to constructive relationships.	Requiring collaboration is intended to enable constructive relationships.	Requiring collaboration is intended to enable constructive relationships. Requiring parties to enter into relationship agreements which they develop themselves should enhance these relationships.
Provide certainty and clarity	This approach would provide a reasonable degree of certainty around statutory responsibilities but could create ambiguity about day-to-day management activities, particularly where responsibilities intersect.	This approach would provide a reasonable degree of certainty around statutory responsibilities.	This approach provides certainty around ultimate statutory responsibilities while also providing mechanisms to confirm operational practicalities on issues like day-to-day maintenance actions.

Positive alignment with criteria	Neutral alignment with criteria	Negative alignment with criteria

Recommended option

245. We recommend that:

- a statutory obligation is established for territorial authorities and transport corridor managers to cooperate and coordinate their management of the stormwater system with water services entities;
- water services entities and territorial authorities, regional councils, and transport corridor managers within their service area be required to develop stormwater relationship agreements;
- water services entities have the flexibility to enter into agreements with any other relevant and willing organisations or individual;
- water services entities be required to develop stormwater catchment management plans; and
- territorial authorities, transport corridor managers, and regional councils be required to collaborate with water services entities in the development of stormwater catchment management plans; and
- water services entities have the flexibility to work with other relevant parties to support the development of the stormwater catchment management plans.

246. The proposals have been consulted with the full set of agencies identified in paragraphs 339 to 342. The stormwater proposals have been specifically tested with the Ministry for the Environment, Ministry for Transport, Ministry of Housing and Urban Development, Taumata Arowai, KiwiRail, and Waka Kotahi. The stormwater management proposals specifically have also been tested with the Central-Local Government Three Waters Steering Committee.

247. The proposals progress the work undertaken by Stormwater Technical Working Group, which drew on expertise within the water industry, iwi and Māori, local government, and central government. To continue the work undertaken by the Stormwater Technical Working Group, we have established a refreshed Stormwater Reference Group with the membership drawn from Taumata Arowai, territorial authorities, regional councils, and iwi representatives. Three technical working groups will support the Stormwater Reference Group to refine policy and support the transition for the water services entities interface with territorial authorities, transport corridor managers, and the regulatory system.

PART D: REPLACING LOCAL AUTHORITY BYLAWS AND ENFORCEMENT PROVISIONS

Context

248. Currently local authorities have coercive powers to regulate the activities of their three waters consumers and third parties through broad bylaw-making powers under the Local Government Act 2002.

249. Bylaws can also regulate actions of third parties in relation to activities that may affect three waters. For example, they can make it illegal to discharge certain substances into stormwater drains, control who can access drinking water catchment areas, and regulate work on or around networks.

250. The Local Government Act 2002 includes a range of offences to regulate activity in relation to three waters services and three waters infrastructure (including a breach of a bylaw). The compliance, monitoring, and enforcement of those offences is currently undertaken by local authority officers, who have the necessary powers delegated to them through the Local Government Act 2002.

251. Notwithstanding they will be publicly-owned statutory entities, some aspects of the water services entities' operations will resemble other regulated infrastructure sectors (such as electricity and telecommunications companies) more than local government organisations. The new water services entities will operate with similar operational and financial independence to other utilities operators in terms of how they deliver drinking water, wastewater, and trade waste services. This has meant that parts of the design and function of the new water services entities can be created through using existing utility models as guiding examples.

252. As the water services entities will not have the same democratic accountability as local authorities, it may not be appropriate for the entities to have the same general bylaw making powers.

253. The key policy issues considered here focus on key elements of the replacement regime for bylaws including the statutory basis for a suite of new instruments, and enforcement and compliance powers. These are covered in two separate sub-parts below.

PART D (1): NEW INSTRUMENTS TO REPLACE BYLAWS

Problem definition

254. Bylaws are secondary legislation made by local authorities under the Local Government Act 2002 and a range of other statutes. A key policy problem for managing three waters services once the water services entities are established is the identification of appropriate ways to manage activities of customers and third parties. As noted above, bylaws regulate a broad range of activities including customer relationships, creating water restrictions, controlling access to drinking water catchment areas, controlling what enters stormwater and wastewater networks (discharges which might not be from 'customers'), and setting standards for network infrastructure.

255. These powers are important because water services providers are regulated and accountable for ensuring drinking water is safe (controlling access to catchments is an important power to support this outcome), and that discharges of treated wastewater

and stormwater into the receiving environment comply will all relevant consents and standards (the ability to exercise some control over what enters the systems helps achieve this outcome).

256. Each local authority has the ability to make its own bylaws, so 67 territorial authorities all have the ability to set rules around three waters services and infrastructure. Some create dedicated water services bylaws, while others have general bylaws that include three waters along with other matters councils regulate through bylaws, such as alcohol control and solid waste management.

257. The process for making bylaws is set out in legislation and is linked to the specific role and function of local authorities. The following questions need to be considered for the future of three waters service delivery:

- Is it appropriate for bylaws to continue to regulate three waters services and infrastructure?
    - And if so, who should have the power to make bylaws (the water services entities; territorial authorities on behalf of the entities; or a hybrid model such as that set out in the Local Government (Auckland Council) Act 2009 where an Auckland water organisation can propose a bylaw and the governing body of the Auckland Council must determine whether it meets certain statutory requirements before the water organisation consults on the proposed bylaw)?
- If the water services entities are given the power to make bylaws, how do we ensure the appropriate accountabilities are in place?
- If bylaws are not used in the future to manage the three waters activities they currently cover, what are the appropriate tools to fill this gap?

258. There is a transitional issue to consider whether and how transition the relevant provisions to the new regime.

259. There are several interrelated parts to this problem, as follows:

- four water services entities are being established to take over responsibilities for three waters service delivery and infrastructure from 67 local authorities from 1 July 2024 – if no change is made they will collectively inherit 67 sets of bylaws;
- water services entities will not have the same public accountabilities local authorities have, so broad bylaw-making powers for three waters may not be appropriate unless additional safeguards are put in place;
- if water services entities were to work with local authorities to use bylaws to regulate three waters activities on their behalf, it is unlikely they would achieve consistency across a water services entity's service area;
- if, instead of using bylaws, water services entities are provided with an alternative range of tools, those tools will need the appropriate legitimacy to enable activities to be regulated and enforced.

Objectives

260. The objectives are to:

- ensure the water services entities have the necessary and appropriate powers to manage their networks and services;
- provide the ability for consistency of approach across a water services entity's service area;
- ensure any instruments made by the appropriate authority with appropriate restrictions and safeguards;
- ensure compliance can be enforced; and
- ensure the approach is administratively efficient.

Options and criteria

261. The options considered were:

Option 1 – Bylaw-making powers for three waters are transferred from local authorities to water services entities to manage three waters services and networks. This option could involve transitional provisions where existing bylaws are continued until they expire or are reviewed and changed by the water services entities.

Option 2 – Local authorities make three waters bylaws on behalf of water services entities' requests, using the established bylaw-making processes for local authorities. This option would also involve the continuation of existing bylaws until they expire or are reviewed and changed at the request of the water services entities.

Option 3 – No statutory instruments replace the use of bylaws for managing three waters, other than ensuring the primary legislation includes appropriate offence provisions. This option would create alignment with utilities such as electricity and telecommunications where offences cover matters such as damage to infrastructure, tampering with meters, and theft, but there would be no statutory instruments (for example, relationships with customers are contractual rather than having a statutory basis). Current bylaws managing three waters would need to end.

Option 4 – Water services entities are provided with statutory instruments to replace the use of bylaws for managing three waters. This option gives the water services entities the power to make rules, which would be secondary legislation, to manage specific aspects of their services and networks, in addition to ensuring the legislation includes the appropriate enforceable offences. This option would need to include appropriate transitional arrangements to transition out of existing bylaws and into the new instruments.

262. The criteria used to assess these options was consideration of whether the options would achieve the objectives set out above.

Options analysis

Option 1: Bylaw-making powers for three waters are transferred to water services entities

263. While transferring bylaw-making powers to the water services entities would ensure the entities have the necessary enforceable powers to manage their networks and services, and are able to achieve consistency across their service areas, this approach would not have sufficient safeguards in place and is not preferred.

264. Local authorities' powers to make bylaws are very broad, and because a breach of a bylaw is an offence, this creates a de-facto ability to create new offences. It is inappropriate for the water services entities to have such broad powers as they will not have the same public accountabilities as local authorities.

Option 2: Local authorities make three waters bylaws on behalf of water services entities

265. Continuing to use bylaws to manage three waters but leaving the bylaw-making power with local authorities would ensure sufficient accountabilities and safeguards are in place, but the other objectives would not be achieved.

266. This option is not preferred; therefore it is not preferred any form of bylaw be used for managing the water services entities' networks and services.

Option 3: No statutory instruments replace the use of bylaws for managing three waters, other than ensuring the primary legislation includes appropriate offence provisions

267. We have considered the approach used to manage other network utility infrastructure and services, and consider it appropriate to ensure the primary legislation includes the appropriate offence provisions to protect networks and source water.

268. However, this option is unlikely to provide the water services entities with sufficient abilities to manage their networks.

269. This option may not provide sufficient safeguards for customers, who are unlikely to have a choice of service provider. Further detail on the matters this option would likely be insufficient at managing is set out from paragraph 274.

Option 4: Water services entities are provided with statutory instruments to replace the use of bylaws for managing three waters

270. As noted above, our preferred option is to ensure the primary legislation includes appropriate offence provisions and replace bylaws with other statutory instruments. This will provide the water services entities with greater abilities to manage their networks and ensure there are sufficient safeguards.

271. The table below summarises the options assessment, and the following sections consider the specific statutory instruments that will be necessary under option 4.

	Bylaw-making power transferred to water services entities	Local authorities make bylaws on behalf	No statutory instruments, offences in legislation	Statutory instruments for three waters (*preferred*)
Water services entities can manage their networks and services	This option would provide water services entities with the ability to manage their networks and services.	Water services entities would be dependent on local authorities to implement tools to manage important aspects of their services.	Water services entities have control over their networks without dependence on local authorities, but their tools may be insufficient.	This option would provide water services entities with the ability to manage their networks and services.
Consistency across a service area	This option would provide the ability to achieve consistency.	This approach would result in separate bylaws for each territorial authority area.	This option would provide the ability to achieve consistency.	This option would provide the ability to achieve consistency.
Appropriate authority, restrictions, and safeguards	Insufficient safeguards if water services entities create bylaws in the same way local authorities are currently able to.	The bylaw-making process provides safeguards but local authorities are not the appropriate authority to be making them.	This approach may not provide sufficient safeguards for customers, who are unlikely to have a choice of service provider.	This approach would be designed to ensure sufficient safeguards.
Enforceability	Bylaws provide strong enforceability.	Bylaws provide strong enforceability.	Offences would be enforceable but if there are no statutory instruments there may be insufficient tools to use and enforce.	New statutory instruments would be designed to ensure they have the necessary enforceability.
Administratively efficient	The efficiency of this approach would depend on detailed design decisions, as it would not be possible to exactly replicate council decision making.	Requiring water services entities to work through each territorial authority would be inefficient.	This option would not involve any administrative burden.	This approach would be designed to ensure it is administratively efficient.

Positive alignment with criteria	Neutral alignment with criteria	Negative alignment with criteria

Recommended option

272. We recommend option 4, that the water services entities are provided with statutory instruments to replace the use of bylaws for managing three waters. The proposals have been consulted with the full set of agencies identified in paragraphs 339 to 342. The Central-Local Government Three Waters Steering Committee was particularly supportive of proposal to move away from the use of bylaws.

273. The following sections consider the specific statutory instruments that will be necessary under the preferred approach. We have identified the following specific issues that are currently managed through bylaws, which warrant further consideration. These are listed below and considered further in the following sections:

- establishing customer relationships, for both residential and trade customers, including setting expectations about bill payments etc.;
- controlling what can be discharged to wastewater networks, and for trade waste, being able to control what is discharged, where in the network, and at what volume and frequency;
- controlling what can be discharged to stormwater networks;
- establishing water restrictions when necessary;
- controlling activities that occur in drinking water catchment areas; and
- preventing unauthorised work on the water services entities' three waters networks and preventing unauthorised connections to the networks (including where wastewater pipes are unlawfully connected into the stormwater network).

Specific tools and instruments

274. Tools and instruments to address these above matters are considered in the following sections. For each of these issues, the options will be assessed against the following objectives[16]:

- ensure the water services entities have the necessary and appropriate powers to manage their networks and services;
- ensure any instruments are made by the appropriate authority with appropriate restrictions and safeguards;
- ensure compliance can be enforced; and
- ensure the approach is administratively efficient.

[16] These are the objectives applying generally to the question of whether bylaws should continue to apply, and if not, what instruments should replace them, with the omission of the service area consistency objective which is achieved with the ability for the entities to make new instruments themselves rather than relying on territorial authorities to make bylaws on their behalf.

Customer relationships

275. The relationships the water services entities will have with their customers would differ from relationships in other key utilities. Water services entities will be essential service suppliers with characteristics of natural monopolies. Like in other utilities, consumers will not have a choice in who their wholesale provider is, and unlike other utilities such as electricity or telecommunications, there will not be any retail competition and therefore customers will (generally) not have any choice in who they receive their water services from. There is also no real ability for a customer to choose not to receive a service from a water services entity, aside from opting to self-supply or sign up for a community or private scheme.

276. The entities will also be required to continue providing a service (in other words, they will be unable to cut of a person's water supply, even in situations of non-payment). It will be important to ensure there is consumer protection and accountability once water services are moved away from local government bylaws.

277. To manage customer relationships, the following options have been considered:

    Option 1 – Create safeguards in the legislation to protect customers, by requiring the water services entities to include certain matters in customer agreements. This could either (A) include standard terms and conditions, or (B) be limited to required topics without standard terms.

    Option 2 – Create safeguards in the legislation to protect customers, by requiring the water services entities to follow a set process in making customer agreements, which could either (A) involve reaching agreement with each customer, or (B) create safeguards around a 'deemed agreement'. Options 1 and 2 are not mutually exclusive and could be combined.

    Option 3 – Allow the water services entities to manage customer relationships through non-statutory instruments, such as contracts.

278. The table below summarises the options assessment.

	Required contents – specified terms and conditions	Required contents – specified topics (*preferred*)	Process safeguards - agreement with each customer	Process safeguards around 'deemed agreements' (*preferred*)	Non-statutory instruments
Water services entities can manage their networks and services	This option would impose conditions on the entities.	This option would provide the entities with more flexibility to manage their networks.	This option could require the entities to agree service standards with each customer.	This option would provide the entities with more flexibility to manage their networks.	This option would provide the entities with more flexibility to manage their networks.
Appropriate authority, restrictions, and safeguards	This would provide strong safeguards.	This would provide strong safeguards.	While providing safeguards, this approach creates a risk of failing to reach agreement.	This would provide strong safeguards.	There is no competitive option for consumers, so safeguards are needed.
Enforceability	Customer agreements would be enforceable.	Customer agreements would be enforceable.	If customers and entities fail to reach agreement there will be nothing to enforce.	Customer agreements would be enforceable.	If customers and entities fail to reach agreement there will be nothing to enforce.
Administratively efficient	This option would not be efficient if terms are set in primary legislation and need to change as network innovation occurs.	This option would provide the entities with more flexibility, and therefore efficiency.	Reaching individual agreements with each customer is not feasible. The entities will need to use one or more standard agreements.	Imposing process requirements adds administrative burden.	This option would provide the entities with more flexibility, and therefore efficiency.

Positive alignment with criteria	Neutral alignment with criteria	Negative alignment with criteria

279. *Recommended option* – Options 1(B) and 2(B) are preferred. We recommend the legislation set mandatory process requirements for making customer agreements and to require the customer agreements to cover certain matters (as topic headings). The Minister of Commerce and Consumer Affairs is proposing that separate legislation require the consumer protection regulator to set a minimum service level code setting

out binding requirements on regulated entities. We prefer this approach rather than setting out terms and conditions in primary legislation. The mandatory contents of customer agreements (i.e. the mandatory topic headings) would complement these requirements as they will ensure that these terms flow through into customer agreements.

Controlling what can be discharged to wastewater networks

280. Trade waste is any commercial and industrial liquid waste disposed of and discharged into the wastewater system, above what would be disposed of in a domestic household. Trade waste includes liquid waste from breweries, laundromats, food premises, dental surgeries, and mechanical workshops, to name a few.

281. Currently, the Local Government Act 2002 provides that trade waste may only be discharged into the wastewater network with the consent of the territorial authority, or if doing so is permitted under a bylaw. Many local authorities use bylaws to establish trade waste permitting regimes. They also prohibit domestic households from discharging harmful substances.

282. With the transition out of bylaws new entities will need the ability to control what can be discharged into the wastewater system, including setting trade waste conditions, and the ability to inspect trade waste disposal sites. Being able to manage trade waste discharges into the wastewater network is particularly important as some substances can only be treated through the wastewater treatment system through dilution, and therefore the entities need the ability to control the flow of these discharges. In addition, the location within a network where substances are discharged can also be an important consideration; the variability of the age and quality of pipes within a wastewater network are important considerations when determining whether to allow the discharge of corrosive substances, for example.

283. It is clear a one-size-fits-all approach is not possible for managing trade waste, and the decision on whether to allow certain discharges requires case-by-case decision making. A fit-for-purpose regime would include mechanisms to set conditions regarding discharges.

284. To manage **trade waste**, the following options have been considered:

    Option 1 – Replicate and adapt the Local Government Act 2002 provision that trade waste may only be discharged into the wastewater network with the consent of the network owner, or if permitted by a bylaw, and replace the use of bylaws with rules made by the water services entities. Provide that the water services entities can make rules around what can be discharged.

    Option 2 – Provide additional flexibility to option 1 by allowing water services entities to issue permits and certificates in accordance with trade waste plans that the water services entities create. The development of the plans would be subject to a statutory process involving consultation requirements, and individual permits would then be issued in accordance with the plan, providing for case-by-case decision making.

    Option 3 – Replicate and adapt part of the Local Government Act 2002 provision that trade waste may only be discharged into the wastewater network with the consent of the network owner, but do not provide any additional statutory instruments to manage trade waste.

All of these options would be complemented with offence provisions for unauthorised discharge of harmful substances that damage the network or are unable to be treated.

285. The table below assesses these options for managing trade waste.

	Statutory instrument	Statutory instrument with case-by-case decision making (*preferred*)	Non-statutory instrument
Water services entities can manage their networks and services	Without the ability for case-by-case decision making, entities' abilities to manage their networks would be constrained.	This option would provide the entities with more flexibility to manage their networks.	This option would provide the entities with more flexibility to manage their networks.
Appropriate authority, restrictions, and safeguards	This would provide strong safeguards.	This would provide strong safeguards.	This option would not provide any safeguards on decision making.
Enforceability	Trade waste rules would be enforceable.	Trade waste permits would be enforceable.	Enforceability of decisions would be dependent on other provisions in the legislation.
Administratively efficient	Requiring trade waste to be managed through rules without the ability for case-by-case decision making could be inefficient as it could require the entities to pre-plan for all possible scenarios rather than being able to respond to applications on demand.	This option would provide the entities with more flexibility, and therefore efficiency.	This option would provide the entities with more flexibility, and therefore efficiency.

286. *Recommended option* – A fit-for-purpose regime would also allow entities to set thresholds for what requires a permit. This flexibility is important as different wastewater treatment plants will have different capacities to receive and treat trade discharge. The trade waste regime also needs to promote transparency and accountability, through appropriate mechanisms, including publication of which discharges are 'permitted' and which are 'discretionary'; provisions to review decisions; and enforcement provisions for minor and serious infringements. Applicants should also have the ability to request a review of the decision of a trade waste permit, in addition to appeal in the courts.

287. We recommend legislation will give water services entities the necessary powers to implement a trade waste management regime that:

- sets conditions regarding discharge (quality, quantity, timing, testing);
- sets thresholds for what requires a permit;
- certifies persons (individuals or businesses) who can discharge trade waste;
- requires publication of which discharges are 'permitted' and which are 'discretionary';
- establishes mechanisms for reviewing decisions;
- includes enforcement provisions to address infringements.

288. This proposal was consulted with the full set of agencies identified in paragraphs 339 to 342 and the Central-Local Government Three Waters Steering Committee. In addition, it was tested with technical experts who currently work within local government who were supportive of the proposed approach and reiterated the importance of the need to control trade waste.

289. To manage **domestic wastewater discharges**, the following options have been considered:

Option 1 – Expand the trade waste permitting regime recommended above to cover all discharges to the wastewater system.

Option 2 – Use customer agreements to set out expectations about domestic wastewater discharges and provide discharges above what would be disposed of in a domestic household can be managed through trade waste permits.

290. The table below assesses these options for managing domestic wastewater discharges.

	Permits	**Customer agreements (*preferred*)**
Water services entities can manage their networks and services	This option would provide the entities with more flexibility to manage their networks.	This option would provide the entities with the ability to manage their networks.
Appropriate authority, restrictions, and safeguards	This approach would provide safeguards.	This approach would provide sufficient safeguards if the recommended safeguards on the use of customer agreements are applied.
Enforceability	Trade waste permits would be enforceable.	Customer agreements would be enforceable.
Administratively efficient	Requiring permits to be issued for all domestic wastewater discharges would not be administratively efficient.	This option would be administratively efficient as it would provide the entities with the ability to use a standardised approach to standard domestic wastewater discharges.

291. *Recommended option* – Case-by-case decision making is inappropriate for ordinary domestic wastewater discharges. We recommend the water services entities not be allowed to require domestic wastewater customers to require a permit for ordinary use, and customer agreements are used to set terms and conditions (including prohibitions) around discharges. We recommend the water services entities have the ability to require customers to obtain trade waste permits if discharges exceed or ordinary domestic use (for example, if a customer has a home workshop working with toxic chemicals).

292. The proposed settings for customer agreements have been tested with the Ministry of Business, Innovation and Employment, and the Commerce Commission to ensure the settings will complement the proposed consumer protection regime for three waters services. As noted above, the Central-Local Government Three Waters Steering Committee was particularly supportive of proposal to move away from the use of bylaws. In addition, the proposals have been consulted with the full set of agencies identified in paragraphs 339 to 342.

Controlling what can be discharged to stormwater networks

293. Stormwater networks are open systems and therefore do not have clearly identifiable end users or customers in the same way drinking water and wastewater services do. Stormwater management is a public good that people cannot be excluded from benefiting from. Therefore, tools like customer agreements or trade waste permits would not be fit-for-purpose for controlling what enters the stormwater system.

294. While stormwater may be subject to some filtering and treatment before it is discharged into the receiving environment, this is not universally the case, and any treatment would be unlike the level of treatment wastewater is subject to. It is therefore important to prevent or minimise harmful substances entering the stormwater network.

295. Currently, local authorities tend to use bylaws to control what can be discharged into stormwater networks, for example they may make it an offence to pour toxic chemicals down stormwater drains, or to wash a car on the street where the runoff can enter the drains. The Resource Management Act 1991, and plans made and consents issued under it, are also important in influencing land use decisions, which contribute to the quantity and quality of stormwater. All parties involved in stormwater management will continue to be required to comply with all resource management requirements.

296. As noted in Part C: Stormwater management responsibilities, the responsibility for stormwater infrastructure in the transport corridor will remain with transport corridor managers (including territorial authorities for local roads) and responsibility for parks and reserves will remain with territorial authorities. This means territorial authorities will retain their bylaw making powers for the parts of the stormwater system they will retain responsibility for.

297. The proposals in this section only relate to stormwater responsibilities that will transfer to the water services entities.

298. The following options have been considered in assessing how to control what can be discharged into stormwater networks:

    Option 1 – Provide water services entities with the ability to make enforceable stormwater rules for the protection of the functioning of their infrastructure.

    Option 2 – Provide a regulator such as Taumata Arowai or regional councils with the ability to make enforceable stormwater rules or network standards.

    Option 3 – Provide that local authority bylaws can continue to manage runoff into the stormwater system. As local authorities will continue to have a role in the stormwater system, this may occur under the modified status quo on matters where responsibilities will not transfer to the water services entities without any further intervention.

    Option 4 – Provide that discharge of harmful substances into the stormwater network is an offence through the primary legislation.

299. Note that these options are not all mutually exclusive. The table below assesses these options.

	Water services entities make rules *(preferred)*	Regulator makes rules or standards *(preferred)*	Bylaws control stormwater	Create offences but no other statutory instrument
Water services entities can manage their networks and services	This option would provide the entities with the ability to control what enters their networks.	Water services entities would be relying on regulators to make appropriate rules to control what enters their networks.	Water services entities would be relying on local authorities to make appropriate bylaws to control what enters their networks.	This option would provide the entities with limited ability to control what enters their networks, as the bar for offences would be high.
Appropriate authority, restrictions, and safeguards	This option would need to be designed to include appropriate safeguards.	Network standards would be appropriate for the regulator to make.	Local authorities will continue to have a role in the stormwater system, but their responsibilities will be more limited and therefore may be less incentivised to make effective bylaws.	With no statutory instruments safeguards on their use are not applicable.
Enforceability	Rules would be enforceable.	Rules or standards would be enforceable.	Bylaws would be enforceable.	Offences would be enforceable, but the bar for charging something as an offence would be too high to exercise adequate control on low level discharges.
Administratively efficient	This option would provide the entities with more flexibility, and therefore efficiency.	If rules made by the regulator were the only tool available, it would be inefficient for the entities to have to work through the regulator to get these made.	If bylaws were the only tool available, it would be inefficient for the entities to have to work through the territorial authority to get these made.	Having offences in the legislation and no further instruments would be administratively efficient.

Positive alignment with criteria	Neutral alignment with criteria	Negative alignment with criteria

300. *Recommended option* –We recommend the current use of bylaws to control what enters the stormwater system is replaced with the ability for water services entities to make rules. As stormwater is an open system affected by land use, it would be

necessary to constrain the rule-making power, so the entities do not have control over all land use decisions.

301. The proposals have been consulted with the full set of agencies identified in paragraphs 339 to 342. In consultation on the proposals, the Ministry of Transport reiterated the need to ensure the water services entities' powers are constrained to cover only their own networks, as a significant proportion of urban stormwater infrastructure will remain within the control of road-controlling authorities (as outlined in paragraph 11). We agree that it is important that these powers do not duplicate Resource Management Act 1991 instruments.

302. In addition, we recommend Taumata Arowai be given the power to make stormwater network standards, which the entities would need to adhere to. This would ensure the networks are appropriately engineered to achieve quality stormwater outcomes. It is not recommended the regulator be able to make rules. Taumata Arowai has been consulted on this proposal and is supportive of the approach.

303. Local authorities will need to retain their bylaw-making powers with respect to the parts of the stormwater network they will retain ownership and management responsibilities for (such as roads and reserves, as outlined in Part C).

304. In addition, we recommend the legislation make it an enforceable offence to cause harmful substances to enter the stormwater network.

Establishing water restrictions when necessary

305. When drinking water supplies are low it is necessary to manage demand to ensure an adequate supply is maintained.

306. Territorial authorities use bylaws to implement restrictions when necessary to manage demand, using rules-based approaches (like bans on garden sprinklers at certain times) rather than engineering or pricing solutions. These restrictions must comply with the Water Services Act 2021, which provides that a drinking water supplier can restrict or interrupt drinking water supply only for specified reasons (including for maintenance, in an emergency, or when environmental factors are affecting a source of a drinking water supply).

307. If the water services entities do not have the ability to manage demand through rules, they may not have the ability to stop supplies from running out when water levels are especially low. Engineering or pricing solutions are not practical for managing demand in the short term, as most of the country's water use is not metered or subject to volumetric pricing.

308. To manage this issue, the following options have been considered:

    Option 1 – Provide the water services entities with a statutory ability to create water restrictions when necessary.

    Option 2 – Do not provide a statutory ability to implement water restrictions; rely on education and awareness campaigns.

309. The table below summarises the options assessment for whether water restrictions should have a statutory basis:

	Statutory ability to create water restrictions (*preferred*)	Non-statutory instrument
Water services entities can manage their networks and services	This option would provide the entities with the ability to control drinking water demand.	If there are no water restrictions the entities will have limited ability to influence demand.
Appropriate authority, restrictions, and safeguards	The Water Services Act 2021 provides safeguards on the use of water restrictions.	The Water Services Act 2021 provides safeguards on the use of water restrictions.
Enforceability	Water restrictions would be enforceable if provided for in the legislation.	If there are no water restrictions, they are not enforceable.
Administratively efficient	The administrative efficiency will depend on the design of the regime. It is anticipated that the entities would create a framework of restrictions in advance of applying them, so they can be applied relatively quickly when the need arises.	Having no ability to implement restrictions would be administratively efficient (but not effective).

310. *Recommended option* – We recommend the water services entities be legislatively empowered to make water restrictions that will apply to drinking water customers. These would need to be consistent with, and not override the provisions in the Water Services Act 2021. The proposals have been consulted with the full set of agencies identified in paragraphs 339 to 342. The only feedback received on this proposal in agency consultation was a request for clarity that water restrictions would not override the constraints on water restrictions set out in the Water Services Act 2021, which they will not.

Controlling activities that occur in drinking water catchment areas

311. Bylaws are currently used to control access to drinking water catchment areas, particularly on land owned by local authorities. Controlled and restricted drinking water catchment areas are an important tool in ensuring the safety of the drinking water supply as they can restrict physical access to only authorised persons, such as staff. Some have the ability to authorise additional individuals to access controlled areas on a case-by-case basis, for example to carry out maintenance or pest management activities (which is important in ensuring the safety of the drinking water).

312. While the Resource Management Act 1991 regime includes instruments that protect drinking water sources (the National Environmental Standards for Sources of Human

Drinking Water), these restrict activities but cannot control physical access and authorise specified individuals in the way that bylaws currently do.

313. To manage this issue, the following options have been considered:

Option 1 – Provide water services entities with the ability to make controlled drinking water catchment areas governed by catchment management plans. These plans will govern the arrangements for control and protection of the catchment protection area, including prohibitions, requirements and restrictions relating to catchment land owned or controlled by the entity. Any prohibitions, requirements or restrictions that relate to land not owned or controlled by the entity would only be by agreement with the landowner.

Option 2 – Have local authorities retain the power to control catchment areas through bylaws (noting local authorities are likely to retain ownership of surrounding land in some but not all cases where drinking water sources are located within reserves).

Option 3 – Do not provide an additional statutory ability to control drinking water catchment areas (other than through instruments under the Resource Management Act 1991 or replacement legislation).

314. The table below assesses these options.

	Water services entities can make controlled catchment areas (*preferred*)	Local authorities retain power to control catchment areas through bylaws	No additional statutory instrument
Water services entities can manage their networks and services	This option would provide the entities with the ability to control drinking water catchment areas.	This option would not provide the entities with the ability to control drinking water catchment areas and would rely on the cooperation of local authorities and water services entities.	This option would not provide the entities with the ability to control drinking water catchment areas.
Appropriate authority, restrictions, and safeguards	As the entities will be required to meet drinking water standards it is appropriate that they have powers and instruments to control their drinking water catchments.	As the entities will be required to meet drinking water standards it is essential entities have the appropriate powers and instruments to control their drinking water catchments.	This option is unlikely to provide sufficient safeguards to protect drinking water sources.
Enforceability	Controlled catchment areas would be enforceable.	Bylaws would be enforceable.	If there are no additional controls, they are not enforceable; though the Resource Management Act 1991 provisions are enforceable.
Administratively efficient	The administrative efficiency will depend on the design of the rules regime.	This option is less efficient as controlled catchments would be administered by local authorities on behalf of water services entities.	Having no ability to implement restrictions would be administratively efficient (but not effective).

Positive alignment with criteria	Neutral alignment with criteria	Negative alignment with criteria

315. *Recommended option* – We recommend legislation will empower water services entities to specify land a 'controlled drinking water catchment area' and govern that area via a catchment management plan.

316. To ensure accountability and be 'fit for purpose' the regime to manage the catchment areas will also need to include provisions allowing entities to issue permits for entry to the catchment area, as well as enforcement provisions to manage compliance.

317. We considered whether the power to control catchment areas should stay with local authorities, but as the entities will be required to meet drinking water standards it is essential entities have the appropriate powers and instruments to control their drinking water catchments.

318. The proposals have been consulted with the full set of agencies identified in paragraphs 339 to 342. The Central-Local Government Three Waters Steering Committee and the Ministry for the Environment provided feedback on the proposals. The Steering Committee stressed the importance of maintaining public access to reserve land where it currently exists, as in some districts drinking water catchment areas are important recreational reserves. The Ministry for the Environment highlighted the need to ensure the settings in the legislation align with but do not override freshwater management instruments made under the Resource Management Act 1991 or Māori freshwater rights and instruments.

PART D (2): ENFORCEMENT FUNCTIONS UNDER THE NEW SYSTEM

Problem definition

319. A key part of ensuring the new water services system is protected is an effective compliance, monitoring and enforcement regime. A regime that is not fit-for-purpose can lead to significant loss for the water services entities, as well as creating serious risk to human health and the surrounding environment. Behaviour which may require enforcement action includes breaches of: the primary legislation or rules relating to controlled drinking water catchment areas; provisions to protect infrastructure from damage; provisions to control what enters the wastewater and stormwater networks (as some substances may not be able to be treated resulting in their discharge to the receiving environment or blockages); breaches of water restrictions; and breaches to customer agreements (for example non-payment). Enforcement provisions will need to range from an infringement regime (for low-risk breaches/non-compliance) to criminal offences (for reckless or negligent conduct that causes risk to public health).

320. Currently, the three waters networks owned and operated by territorial authorities is also enforced by them, through authority given under the Local Government Act 2002. However, as the three waters assets and functions are transferring from territorial authorities to the water services entities, it may no longer be appropriate for the enforcement functions to remain with territorial authorities.

321. Enforcement officers will require a range of powers, including powers for search and seizure and the ability for enforcement officers to take remedial action, which will need to be set out in legislation.

322. The problem can be summarised as:

- if there are insufficient monitoring, compliance, and enforcement provisions, water services entities' networks will be at risk of damage, drinking water sources could be at risk of contamination, and wastewater and stormwater discharges could exceed consented standards through the actions of third parties;
- enforcement powers can be strong coercive powers, so they need to be subject to appropriate safeguards to ensure they are not overused;
- if there are inappropriate incentives in place for the enforcement agency, the regime may be under-enforced, leading to risks to the network, human health, and the environment.

Objectives

323. The objectives are:

- enforcement is carried out by officers with relevant expertise;
- enforcement activity is cost-effective and efficient;
- consistency across a water services entity's service area is achieved;
- enforcement powers are appropriate and there are appropriate checks and balances in place;
- the parties with enforcement powers have the appropriate incentives, and the powers are aligned with the agency's core functions and do not create a conflict of interest;
- risks to public health and environmental damage are mitigated.

Options and criteria

324. Three options for which authority is best placed to undertake compliance, monitoring and enforcement have been identified. There are three options for which authority is best placed to undertake compliance, monitoring and enforcement of the offence provisions designed to protect the three waters networks. They are:

    Option 1 – Territorial authorities retain responsibility for enforcement in relation to three waters services and infrastructure, despite no longer having operational control.

    Option 2 – Taumata Arowai is provided with additional enforcement powers to protect water services entities' networks (it already is the water services regulator and will have the ability to take enforcement action against the water services entities).

    Option 3 – Water services entities have enforcement powers.

325. The criteria used to assess these options was consideration of whether the options would achieve the objectives set out above.

Options analysis

Option 1: Territorial authorities have three waters enforcement powers

326. Territorial authorities' officers currently carry out the enforcement functions for breaches of three water related offences (found both in the Local Government Act 2002 and local bylaws). As such, they have relevant expertise and experience. However, with the transfer of other functions, duties and powers, as well as some staff from territorial authorities to the water services entities, there is a risk some councils may not retain the necessary expertise to carry out the full range of functions needed to support monitoring and enforcement.

327. In addition, using the territorial authorities would mean a water services entity would have multiple different enforcement agencies within one entity area for officers that carry out the same functions. This would create risks for discrepancies between districts and would impact the entities' ability to easily control and monitor consistent compliance within their boundary.

Option 2: Taumata Arowai's enforcement powers are extended to protect water services entities' networks and regulate their customers

328. Taumata Arowai was established to regulate drinking water suppliers, and to provide oversight over the performance of drinking water, wastewater and stormwater

networks. One of its core functions is to regulate all drinking water supplies, including those run by the entities, as well as other suppliers.

329. The legislated purpose of Taumata Arowai is not aligned with carrying out enforcement functions to regulate the behaviour of the entities' customers and third parties to protect the entities' networks. We consider creating an additional obligation to monitor and enforce compliance with laws protecting the water services entities' networks would be an inappropriate extension of Taumata Arowai's powers. As Taumata Arowai regulates the entities, there would be a potential conflict if it also regulates the entities' customers and third parties.

Option 3: The water services entities have enforcement powers

330. The water services entities will have the knowledge and information on where their assets are, who their customers are, and which part of the stormwater network they are responsible for. They will be best placed to develop and maintain the appropriate expertise and capability to effectively carry out the monitoring and enforcement functions.

331. The entities will have the most interest in protecting their assets, and the most to gain by investing in compliance and monitoring for low level offences. It is therefore in the public interest the most appropriate and effective authority, with the greatest ability to invest in capability and capacity, have enforcement functions and powers.

332. While moving away from a local government model loses some public accountability in this space, there are other mechanisms which contribute to the accountability of entity enforcement officers. These include:

- each water services entity's Regional Representative Group's Statement of Strategic and Performance Expectations;
- internal entity processes governing the appointment of officers authorised to enforce the provisions;
- the Search and Surveillance Act 2012, which requires the application for and issuing of search warrants where necessary;
- offences and penalties will be prescribed in legislation and disputes/appeals would be dealt with through typical justice system processes.

333. Other accountabilities are being actively considered.

334. The table below summarises the options assessment.

	Territorial authorities	Taumata Arowai	Water services entities (*preferred*)
Relevant expertise	Territorial authorities currently have expertise, but staff and expertise will migrate to the water services entities as some functions are transferred from local authorities to the water services entities.	Taumata Arowai is the water services regulator, but its role is to regulate water service providers not customers or third parties.	Water services entities will have the most expertise to carry out enforcement in relation to their own networks and services.
Cost-effective and efficient	It would be inefficient for each water services entity to work with multiple enforcement agencies (e.g. relying on enforcement officers in several territorial authorities within each entity's area of operation).	This approach would be less efficient than the water services entities having enforcement responsibilities.	This approach would be most efficient as it aligns with the operational functions of the water services entities,
Consistency across a service area	This approach would not achieve service area consistency.	This approach would achieve service area consistency with a single national regulator.	This approach would achieve service area consistency as each entity would have one approach within its area of operation.
Parties have appropriate powers and checks and balances	Having the appropriate powers and checks and balances is dependent on the design of the legislative settings.	Having the appropriate powers and checks and balances is dependent on the design of the legislative settings.	Having the appropriate powers and checks and balances is dependent on the design of the legislative settings.
Parties are incentivised to carry out enforcement	Territorial authorities are unlikely to be incentivised to prioritise three waters enforcement.	Taumata Arowai regulates the entities, creating a potential conflict if it also regulates the entities' customers and third parties; the entities may have insufficient ability to meet their standards if the rules governing third parties are weak.	The water services entities would be most incentivised to carry out enforcement.
Public health and environmental risks are mitigated	This approach may not achieve the desired outcomes due to the inefficiency of the approach and lower incentives for enforcement.	Protecting drinking water safety and environmental performance of three waters networks are part of Taumata Arowai's statutory objectives.	This approach is most likely to achieve public health and environmental outcomes as it is most likely to result in effective enforcement action.

Positive alignment with criteria	Neutral alignment with criteria	Negative alignment with criteria

Recommended option

335. We recommend the water services entities are given the necessary authority to monitor compliance, issue fines and notices, and carry out enforcement in accordance with enforcement powers and offence provisions set out in the primary legislation, and will include relevant safeguards. Some offences from the Local Government Acts of 2002 and 1974 in relation to water services would be transferred through the Amendment Bill and modernised, for example. Penalties would be modelled on similar penalties specified under the Local Government Act 2002, the Resource Management Act 1991, the Water Services Act 2021, Te Ture Whenua Māori Act 1993 (where relevant), and other utility legislation, for example. Further consideration will also be given to whether pecuniary penalties are appropriate.

336. The proposed approach to enforcement has been consulted with the full set of agencies identified in paragraphs 339 to 342. Taumata Arowai was supportive of the proposed approach.

337. The Ministry for the Environment sought clarity around the proposed powers for water services entities and was satisfied when we made it clear that the proposed enforcement functions would not be a form of self-regulation as the entities will still be subject to regulation from Taumata Arowai, regional councils, and the economic regulator; the proposed powers are focussed on infrastructure protection. The Ministry of Justice similarly queried whether the proposals created perverse incentives for the water services entities. The Department discussed the approach with the Ministry of Justice who will be consulted in ongoing discussions regarding the oversight of compliance officers.

338. Te Waihanga agreed that compliance, monitoring and enforcement would be better undertaken by water service entities. It stated that it is not appropriate for Taumata Arowai to have these functions, as it may compromise their regulatory role – for example, if Taumata Arowai did not adequately ensure compliance with rules protecting a water catchment, could they then undertake enforcement action against an entity if an incident occurred which compromised water quality?

Consultation

339. The Ministry for the Environment; Ministry of Health; Taumata Arowai, Ministry of Business, Innovation and Employment; the Commerce Commission, the Treasury; Ministry for Primary Industries; National Emergency Management Agency; Department of Conservation; Toitū Te Whenua Land Information New Zealand; Ministry of Housing and Urban Development; Ministry of Education; Ministry of Transport; Te Puni Kōkiri; Te Arawhiti; Te Waihanga; Te Kawa Mataaho; Ministry of Social Development; Office for Disability Issues; Ministry of Justice, and Inland Revenue Department have been consulted on the proposals in this RIA.

340. The Department of Conservation, New Zealand Defence Force, the Ministry of Education, and Department of Corrections have operational responsibility for three waters services and have been consulted in this capacity.

341. The Department of the Prime Minister and Cabinet's Policy Advisory Group has been informed.

342. The Central-Local Government Three Waters Steering Committee[17], the Rural Supplies Technical Working Group, and the Stormwater Reference Group were consulted on aspects of these proposals at a high-level and on specific details as outlined throughout this RIA. Targeted engagement on growth charging has also occurred with high growth territorial authorities and the Property Council.

Monitoring, review and evaluation

343. Monitoring, review and evaluation of the transition to the new regime will be ongoing, with national-level monitoring and reporting powers in the Water Services Act 2021.

344. These are major, complex reforms, and it will be important to ensure the new system is working effectively and as intended. The Water Services Entities Bill provides for a two-stage review process:

- an 'interim' review of the entities' governance framework after five years, as part of an initial check on how things are working;
- a more comprehensive review of the new three waters system, within 10 years of the commencement of that system.

345. This aligns with and will support and inform central government's ongoing system oversight, stewardship and monitoring work.

346. This would be similar to the approach taken when the significant reforms to local government legislation were made in 2002, whereby a statutory review into the operation of the Local Government Act 2002 and Local Electoral Act 2001 was provided for in the legislation.

[17] The Joint Central-Local Government Three Waters Steering Committee has been established to provide oversight and guidance to support progress towards reform, and to assist in engaging with local government, iwi/Māori and other water sector stakeholders on options and proposals.

It comprises independent chair Brian Hanna, local government mayors, chairs and chief executives, representatives of Local Government New Zealand and Taituarā — Local Government Professionals Aotearoa (formerly SOLGM), officials and advisors from the Department of Internal Affairs, Taumata Arowai, the Ministry of Business, Innovation and Employment and the Treasury.

The Steering Committee ensures the perspectives, interests and expertise of both central and local government, and of communities throughout New Zealand are considered, while the challenges facing water services and infrastructure are addressed.

SUMMARY OF RECOMMENDATIONS

Part A (1): Price setting and charging processes

347. We recommend the following statutory approach to the listed pricing and changing matters.

Pricing/Charging matter	Recommended statutory approach Enable/require	Recommendations
Setting out charges in annual tariff list	Require	We recommend a statutory requirement that all water services entity charges will be set out annually with the publication of a detailed tariff list.
Embedding pricing principles and rules to guide tariff setting	Require	We recommend principles and rules to guide tariff setting be included in legislation
Empowering the economic regulator	Establish powers, enable use of range of instruments	We recommend legislation set out powers of the economic regulator to provide guidance, and if necessary, produce input methodologies and determinations on the implementation of pricing rules and principles.
Geographic price averaging and community affordability	Enable but not require	We recommend geographic averaging is enabled but not required by legislation, leaving decisions about geographic averaging to government through the Government policy statement on water services.
Managing transition price shocks	Enable with regulation making power to require	We recommend the legislation include a regulation-making power to freeze tariff structures and limit price increases in the first three years of water services entities' operations. The economic regulator would need to be consulted on the making of these regulations.
Removing existing cross-subsidies	Require	We recommend the legislation will cancel the pricing and charging provisions in any contract with a commercial entity for the supply of water services by a water services entity. This would take effect 5 years after the establishment of the water services entity.

Part A (2): Support for vulnerable households

348. The recommendations cover two aspects of support

Support mechanisms	Recommendations
Targeted financial support	We recommend central government be responsible for assessing and providing any targeted financial assistance for households facing financial difficulty in paying their water bills.
Rates Rebate Scheme	We recommend that the Rates Rebate Act 1973 be amended so water bills will be included, leaving the current beneficiaries of the scheme unaffected by the change in the provider of water services.
Pricing structures	We recommend the legislation include regulation-making power aimed at protecting vulnerable households, to establish price rules applying to all residential consumers: • to set a limit on the ratio between fixed and volumetric water revenues • To not allow the use of pricing structures, such as block tariffs or low user charges, that vary the unit price of a volumetric charge based on the level of consumption.

Part A (3): Stormwater pricing and charging

349. We recommend stormwater be funded through a charge on ratepayers. We note charging properties based on their rateable value would require territorial authorities to share their rating information with water services entities on a reasonable cost basis.

350. We also recommend the new system come into effect no later than 1 July 2027, but it can be brought into effect sooner through regulation. In tandem, we also propose a regulation making power so the responsible Minister can put in place an appropriate transitional pricing approach for the first three years of waters services entities operation. These recommendations are to manage the risks arising from very poor information on current stormwater charges across the country.

Part A (4): Growth charging

351. We recommend:

- growth charging for water services entities for drinking water, wastewater and stormwater be enabled through a statutory instrument called a 'water infrastructure contribution'; and
- water infrastructure contributions operate on a principles-based model, rather than the more prescriptive development contribution model.

Part B: Land access

352. We recommend transferring and adapting local government and utilities legislation provisions for the water services entities in three 'layers':

- transfer most of the current land access provisions in local authority legislation to the water services entities, or replicate those which will continue to apply to local authorities;
- adapt some land access provisions from legislation governing other utilities, such as electricity, gas and telecommunications, to bring the powers for water services entities into alignment – this would include powers such as access to road reserves, and provide additional safeguards for landowners (such as escalation processes for disputes); and
- enhance/update some land access provisions to provide better recognition and protection for Māori land.

Part C: Stormwater management responsibilities

353. We recommend:

- a statutory obligation is established for territorial authorities and transport corridor managers to cooperate and coordinate their management of the stormwater system with water services entities;
- water services entities and territorial authorities, regional councils, and transport corridor managers within their service area be required to develop stormwater relationship agreements;
- water services entities have the flexibility to enter into agreements with any other relevant and willing organisations or individual;
- water services entities be required to develop stormwater catchment management plans; and territorial authorities, transport corridor managers, and regional councils be required to collaborate with water services entities in the development of stormwater catchment management plans;
- water services entities have the flexibility to work with other relevant parties to support the development of the stormwater catchment management plans.

Part D (1): New instruments to replace bylaws

354. We recommend the water services entities are provided with statutory instruments to replace the use of bylaws for managing three waters. The following recommendations cover the specific statutory instruments necessary under the preferred approach.

Customer agreements

355. We recommend the legislation set mandatory process requirements for making customer agreements and to require the customer agreements to cover certain matters (as topic headings). It is not recommended legislation set mandatory terms and conditions of the agreements as the Minister of Commerce and Consumer Affairs is proposing separate legislation require the consumer protection regulator to set a minimum service level code setting out binding requirements on regulated entities.

Trade waste management

356. We recommend legislation will give water services entities the necessary powers to implement a trade waste management regime that:

- sets conditions regarding discharge (quality, quantity, timing, testing);
- sets thresholds for what requires a permit;

- certifies persons (individuals or businesses) who can discharge trade waste;
- requires publication of which discharges are 'permitted' and which are 'discretionary';
- establishes mechanisms for reviewing decisions;
- includes enforcement provisions to address infringements.

Domestic wastewater discharges

357. We recommend:

- the water services entities not require domestic wastewater customers to need a permit for ordinary use, and that customer agreements are used to set terms and conditions (including prohibitions) around discharges;
- water services entities have the ability to require customers to obtain trade waste permits if discharges exceed or ordinary domestic use (for example, if a customer has a home workshop working with toxic chemicals).

Controlling what can be discharged to stormwater networks

358. We recommend;

- the current use of bylaws to control what enters the stormwater system is replaced with the ability for water services entities to make rules;
- Taumata Arowai be given the power to make stormwater network standards, which the entities would need to adhere to;
- local authorities will need to retain their bylaw-making powers with respect to the parts of the stormwater network they will retain ownership and management responsibilities for (such as roads and reserves, as outlined in Part C); and
- the legislation makes it an enforceable offence to cause harmful substances to enter the stormwater network.

Establishing water restrictions when necessary

359. We recommend the water services entities be legislatively empowered to implement water restrictions that will apply to drinking water customers. These would need to be consistent with, and not override the provisions in the Water Services Act 2021.

Controlling activities that occur in drinking water catchment areas

360. We recommend:

- legislation will empower water services entities to specify land a 'controlled drinking water catchment area' and govern that area via a catchment management plan;
- to ensure accountability and be 'fit for purpose' the regime to manage the catchment areas will also need to include provisions allowing entities to issue permits for entry to the catchment area, as well as enforcement provisions to manage compliance.

Part D (2): Enforcement functions under the new system

361. We recommend the water services entities are given the necessary authority to monitor compliance, issue fines and notices, and carry out enforcement in accordance with enforcement powers and offence provisions that will be set out in the primary

legislation. These will be based on those currently in the Local Government Act 2002 relating to three waters, and modelled on provisions in the Resource Management Act 1991, the Water Services Act 2021 and other utility legislation.

Appendix A – Proposed Pricing Principles to guide tariff setting

Proposed pricing principles in legislation are enduring principles that would inform price setting. The proposed principles have been drawn from a review of legislated principles in other jurisdictions, including the OECD, England, Scotland, and Ireland.

The suggested principles are:

- Simplicity. Tariffs should be simple, transparent and easy to understand for consumers.
- Non-discriminatory. Tariffs should be non-discriminatory: there is no undue preference shown to or no undue discrimination against, any class of customers, so that purchasers of services with the same cost pay the same price (with the exception that a water services entity may charge lower (or no) growth charges to Māori communities, if this is to remedy an historic inequity in service provision). Customers in different places are not different classes of customer, if a decision has been made to geographically average their prices.
- Full cost recovery. Tariffs should reflect full cost recovery in the long-run: the price for each service reflects an appropriate contribution to the full underlying efficient cost of delivering that service so over time the full efficient costs of providing that service across all users is recouped (with the exception of growth charges which are not intended to fully recover costs).
- Resource efficiency. Tariffs should promote resource efficiency: prices should generally be structured to signal to customers the costs associated with their water use decisions. Using water efficiently contributes to Te Mana o te Wai, by extracting less water from ecosystems, and reduces climate impacts.

Appendix B – Local Government Act Section 197AB – Development contributions principles

1. All persons exercising duties and functions under this subpart must take into account the following principles when preparing a development contributions policy under section 106 or requiring development contributions under section 198:

a) development contributions should only be required if the effects or cumulative effects of developments will create or have created a requirement for the territorial authority to provide or to have provided new or additional assets or assets of increased capacity:

b) development contributions should be determined in a manner that is generally consistent with the capacity life of the assets for which they are intended to be used and in a way that avoids over-recovery of costs allocated to development contribution funding:

c) cost allocations used to establish development contributions should be determined according to, and be proportional to, the persons who will benefit from the assets to be provided (including the community as a whole) as well as those who create the need for those assets:

d) development contributions must be used—for or towards the purpose of the activity or the group of activities for which the contributions were required; and for the benefit of the district or the part of the district that is identified in the development contributions policy in which the development contributions were required:

e) territorial authorities should make sufficient information available to demonstrate what development contributions are being used for and why they are being used:

f) development contributions should be predictable and be consistent with the methodology and schedules of the territorial authority's development contributions policy under sections 106, 201, and 202:

g) when calculating and requiring development contributions, territorial authorities may group together certain developments by geographic area or categories of land use, provided that the grouping is done in a manner that balances practical and administrative efficiencies with considerations of fairness and equity; and grouping by geographic area avoids grouping across an entire district wherever practical.